

NATIONAL PARK SERVICE'S DRAFT MANAGEMENT POLICIES

HEARING BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED NINTH CONGRESS

FIRST SESSION

TO

RECEIVE TESTIMONY ON THE NATIONAL PARK SERVICE'S DRAFT MANAGEMENT POLICIES, INCLUDING POTENTIAL IMPACT OF THE POLICIES ON PARK OPERATIONS, PARK RESOURCES, INTERACTION WITH GATEWAY COMMUNITIES, AND SOLICITATION AND COLLECTION OF DONATIONS

NOVEMBER 1, 2005



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NATIONAL PARK SERVICE'S DRAFT MANAGEMENT POLICIES

TUESDAY, NOVEMBER 1, 2005

U.S. SENATE,
SUBCOMMITTEE ON NATIONAL PARKS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room SD-366, Dirksen Senate Office Building, Hon. Craig Thomas presiding.

OPENING STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. I will call the meeting of the National Parks Subcommittee to order.

This is an oversight hearing of National Park Service management policies.

Thank you all for being here. I am particularly pleased to have some regional directors here from the Park Service, and I want to welcome our witnesses for today's subcommittee hearing.

The purpose of our hearing, of course, is to review the National Park Service's proposed management policies, including the potential impact of the policies on park operations and park resources, interaction with gateway communities, solicitation and collection of donations, and revised manager hiring policies.

National parks, of course, are special places that symbolize the American spirit. Each park was established by the Congress for a specific purpose and, of course, must be managed to sustain that purpose. The management policies we are here to discuss are intended to guide employees as they seek to maintain the resources for the current and future public enjoyment.

We were all reminded of the public interest in national parks when people were made aware of the plans to revise the management policies. Some overreacted by concluding that the internal working document was destined for implementation. We know now that it is a work in progress.

I would like to commend Steve Martin and the members of the National Park Service policy development team for being responsive to public concerns. The purpose of this hearing is to continue to obtain public input and to ensure the National Park Service is well informed as they complete the document.

Again, I would like to thank all of you for being here. Certainly we have been involved in this process for a very long time. I personally believe the purpose of the parks, of course, is to maintain

the resources and, at the same time, allow the public to enjoy those resources. We, of course, have had a good deal of experience with that in some of our parks in Wyoming and so on.

So in any event, thank you all for being here.
Senator Akaka.

**STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR
FROM HAWAII**

Senator AKAKA. Thank you very much, Mr. Chairman. Of course, thank you for scheduling this timely hearing to review the National Park's draft management policies.

While I appreciate the effort that has been made to improve this proposal from the earlier drafts, I question the need for such a sweeping revision so soon after the current policies were approved. I am concerned about the process for developing the proposed policies and also whether the new policies will provide park managers with clear guidance on the significance of protecting park resources, both natural and cultural.

In addition to the proposed management policies, I would like to raise another Park Service management issue that I believe is very problematic. A few weeks ago, the Director issued new requirements for the hiring of park superintendents, assistant superintendents, and deputy superintendents at the GS-13 grade and above, all career Civil Service positions. The new policy also covers program managers at the GS-15 level.

Under the new policy, prospective candidates for any of these jobs must be vetted by the Park Service leadership in Washington, D.C. In addition to providing a statement of the job candidate's experience, competencies, and potential for management excellence, the regional offices will also be required to provide the Park Service leadership with a statement of the candidate's ability to lead employees in achieving the Park Service's Legacy goals, Secretary Norton four C's agenda, and the President's management agenda.

I am very concerned that this new requirement will add a political element to the hiring and promotion process for career employees that is inconsistent with the Federal Civil Service laws. I look forward to exploring the new requirements in my capacity as the ranking member of the Senate's Federal Workforce Subcommittee. We need to ensure that the hiring and promotion of all Federal employees is carried out in a manner consistent with the Government's merit principles and free from political interference.

Mr. Chairman, I would like to welcome our distinguished panel of witnesses this morning, and I look forward to hearing more about these issues. Thank you very much.

Senator THOMAS. Thank you, sir.
Senator Alexander.

**STATEMENT OF HON. LAMAR ALEXANDER, U.S. SENATOR
FROM TENNESSEE**

Senator ALEXANDER. Mr. Chairman, I have got a lot to say, but I think I will wait until I hear the witnesses. I want to thank you for calling the hearing.

I am deeply concerned about the first revisions, and the second revisions I am trying to read and understand. I wrote the Secretary

of the Interior, along with five other Republican Senators, to make it clear that there were a number of us who were concerned, and the number is larger than that. I guess what I want to find out is why we are doing this and whether it really is consistent with or undermines the Organic Act, which has existed since the parks were created, that creates a strong bias toward preservation and conservation in our National Park System.

So I look forward to hearing the testimony, and I thank you for calling it.

Senator THOMAS. Thank you for postponing your statement.

Senator Bingaman.

**STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR
FROM NEW MEXICO**

Senator BINGAMAN. Mr. Chairman, I will take the opportunity to give a short statement too, rather than totally postponing it.

I agree with what Senators Akaka and Alexander have said about the real question being what is wrong with the current policies that were updated, as I understand it, as recently as 2001. Why are we doing a major revision of those? Is there some restriction on the public's right to access to the parks that I am not aware of? That is, I guess, a question.

Another issue that I wanted to just mention that obviously I am going to ask some questions about is this whole move, as I see it—and maybe I am misinterpreting it, but it seems to be a move toward authorizing the Park Service employees to solicit donations, to allow donor recognition in national parks, to allow for the first time, the naming of rooms in park facilities after corporate sponsors, after private sponsors. I have real concerns about this whole commercializing of our national parks which I fear might be an outcome from this. So I will have questions about that as well.

Thank you.

Senator THOMAS. Thank you, sir.

Senator Salazar.

**STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR
FROM COLORADO**

Senator SALAZAR. Mr. Chairman, thank you very much for holding this hearing on a very important issue. I associate myself with the introductory comments that have been made by my colleagues. I have an opening statement that I will submit for the record.

Let me just say that I too am very troubled by the proposed changes, and I hope that what this hearing does is provide the witnesses an opportunity to provide an explanation to this committee as to what the reasons for these changes are and, second, what will be the results on our National Park System if in fact these proposed changes are implemented.

It seems to me that there is also a significant question that we all ought to have on our minds, and that is why this process came about in the way that it did, in contrast to the prior processes where the National Park Service's rules have been changed in the Reagan administration, as well as during the Clinton administration, where it seemed that there was the kind of consultation over a long period of time that resulted in changes to these rules. I do

not see that that has occurred here from what I have been able to tell and from what I have heard from people who are on the ground. So I too bring concerns and have a number of questions that we will get to during the question and answer period.

[The prepared statement of Senator Salazar follows:]

PREPARED STATEMENT OF HON. KEN SALAZAR, U.S. SENATOR FROM COLORADO

Thank you Mr. Chairman. I appreciate you holding this hearing today and giving me and the rest of the Subcommittee members an opportunity to discuss these Draft Management Policies. As the Chairman is well aware, National Parks represent the crown jewels of our natural heritage. These special places have been set aside to be preserved for the enjoyment of our generation as well as for the enjoyment of future generations. The only way to accomplish this is to consistently manage our National Parks so that the resources are not harmed, period.

To help set the tone for this hearing, I would like to read a quote:

There can be nothing in the world more beautiful than the Yosemite, the groves of giant sequoias and redwoods, the Canyon of the Colorado, the Canyon of the Yellowstone, the Three Tetons; and our people should see to it that they are preserved for their children and their children's children forever, with their majestic beauty all unmarred.

That was President Theodore Roosevelt.¹

Mr. Chairman, in light of the overwhelming popular support our National Parks enjoy, the relatively short time period since the last management policy revision, and the simple guiding principle for the management of our National Parks set forth in the 1916 Organic Act; I ask: shouldn't we continue to manage our National Parks as Theodore Roosevelt so eloquently laid out, in a way that preserves these national treasures not only for current generations, but for future generations as well?

I am deeply troubled by the sweeping and fundamental nature of these proposed changes to the Park Service's Management Policies, which have stood the test of time. Mr. Chairman, I am not convinced that there is a compelling reason for these changes. According to the National Park Service, visitor satisfaction has not been below 95% since 2001.²

I look forward to getting a candid assessment of these proposed changes from Steve Martin, who has served for 30 years with the National Park Service, and from Denny Galvin, who served as Deputy Director of the National Park Service under three Presidents—Ronald Reagan from 1985 to 1989; Bill Clinton, from 1998 to 2001; and George W. Bush, from 2001 until his retirement in 2002.

Thank you Mr. Chairman.

Senator THOMAS. Thank you, sir.

Let me again welcome the witnesses. The Honorable Steve Martin is Deputy Director of the National Park Service. Mr. Denis Galvin, former Deputy Director of the National Park Service, is retired. Is Mr. Horn here? Would you care to take your seat, Mr. Horn? We will have you all at the same time. Bill Horn, former Assistant Secretary Fish and Wildlife and Parks of the Department of the Interior; and Mr. Don Castleberry, former Midwest Regional Director of the Park Service, also retired.

I thank all of you for being here. We look forward to your comments, and obviously there will be some questions. Your total statements will be made a part of the record. Kind of capsule them a little. Then we will get on to the discussion with the members. So again, thank you.

¹Theodore Roosevelt, *Outdoor Pastimes of an American Hunter*, 1905.

²NPS began collecting statistics on visitor satisfaction beginning in 1998, in conformance with the Government Performance and Results Act passed by Congress and the Clinton Administration in 1993. Since those statistics have been collected, the level of visitor satisfaction has consistently scored at or above 94 percent. For years 1998 to 2004 the ratings were 95%, 94%, 95%, 95%, 95%, 96%, and 96% respectively. Margin for error cited by the Park Service is 6%, with a confidence level of 95%.

Mr. Martin, would you like to begin please?

**STATEMENT OF STEPHEN P. MARTIN, DEPUTY DIRECTOR,
NATIONAL PARK SERVICE**

Mr. MARTIN. Yes, and Mr. Chairman, thanks for providing this opportunity to appear before your subcommittee. We look forward to having the dialog and a chance to discuss these issues.

I am a 30-year veteran of the NPS, having served as a ranger, resource manager, superintendent of three parks, regional director, and deputy director for the NPS. With me today are also, as you mentioned, some of our members of the leadership council, and at the end we could certainly introduce them. They are willing to respond to questions if you have that interest, or we can certainly come meet with any of you at any time.

The NPS management policies provide guidance for managing the National Park System and offer the public an understanding of our management practices and goals. These policies are based on laws, executive orders, proclamations, and regulations that govern the NPS, as well as departmental policies and longstanding NPS practices. This document, like the management policies that have preceded it, pursue the highest standard of conservation and enjoyment of our parks, the 388 units, that welcomed over 287 million visitors last year.

We feel the current draft document, if read as a whole, strengthens the guidance to park managers to ensure that there is a commitment to the fundamental purpose of the National Park System as set out in the NPS Organic Act of 1916.

The overarching message of this draft document is to continue improving how we manage parks. You may hear about what has been taken out of the current policies, but you need to take some time to think about what has been put in as well. To quote from the draft: "to protect park resources and values to ensure that these resources and values are maintained in as good or better condition for the enjoyment of present and future generations." This is the first time we discuss passing on to future generations parks in better condition. We also try to communicate that. We welcome people to use their parks and to help us to protect the parks. If something in this draft document seems inconsistent with these goals, we must reiterate that it is a draft and we will resolve that inconsistency as we continue to improve it based on public and our employee input.

The policies embrace the fundamental concept that when there is a conflict between use and conservation, conservation of the resources will be predominant. For example, the draft states that "when there are concerns as to whether an activity or action will cause impairment, the Service will protect the resources," and it also states that "when proposed park uses and the protection of park resources come in conflict, park managers are obligated to ensure that the purposes for which the park was created are not diminished." The term "diminished" was used because we do not want to wait for impairment, but to step in to protect resources as the problem arises. This is logical because inspiration and enjoyment cannot occur without the preservation of the resources.

In revising the 2001 policies, we also tried to change the perception some had that our message may have become strident. We must be open to working cooperatively with others in the practice of park management. This does not change what we do, but how we conduct ourselves as park managers.

The revision defines appropriate use and establishes a clear process for managers to use professional judgment in determining what uses are appropriate. It defines unacceptable impacts, a proactive concept not found in the 2001 document that is designed to prevent impairment. We have been asked why are you revising the policies now, and we admit that some of what occurred during the document's rollout was unfortunate and caused a lot of uncertainty and suspicion.

But the answer is simple. It is about excellence. The world is changing and we continue to strive for excellence. Excellence means improving our guidance on not only preventing impairment, but on preventing unacceptable impacts. Excellence means increasing the understanding of appropriate use and making sure that this part of the mission is not overlooked. Excellence means keeping the key management decisions in the hands of the managers defining professional judgment. Excellence means not managing our parks in isolation, but working with others and engaging them in conservation.

The existing policies do not clearly address management excellence, and the business practices personal management sections were weak. As we all know, the climate that we are doing business in now is very different than it was 5 years ago. Improved policies are also needed because we face continuing challenges in managing an array of wonderfully diverse areas. Parks range from Langston Golf Course in Washington, D.C. to the 8.5 million acres of Gates of the Arctic National Park and Preserve in Alaska. Every day without fail, we are tested when we make decisions on what to do or what not to do, what to build, what not to build, what to allow, and what not to allow. To make these decisions, we need a detailed formula that works for managing the birthplace of Martin Luther King, Jr., as well as managing the bison herd at Yellowstone National Park, not a simple litmus test that lacks practical efficacy. The many additions to this document attempt to accomplish that difficult task.

The men and women who manage our parks are some of the best in government, and we ask a lot of them and they deserve good guidance.

In summary, in 1918, in the very first policy, Secretary Lane wrote a statement that is still directly quoted in and is a vital part of our policies today. I quote: "First, that national parks must be maintained in absolutely unimpaired form for the use of future generations, as well as those of our own time; second, that they are set apart for the use, observation, health, and pleasure of the people; and third, that the national interest must dictate all decisions affecting public or private enterprise in the parks."

I hope everyone, after all that has gone on, can unite in support of the goal to work on these policies—they are a draft—and ensure the best possible management for parks in the 21st century. Let us work together as we continue to improve this document.

That concludes my statement, and I will be happy to answer any questions.

[The prepared statement of Mr. Martin follows:]

PREPARED STATEMENT OF STEPHEN P. MARTIN, DEPUTY DIRECTOR,
NATIONAL PARK SERVICE

Mr. Chairman, thank you for the opportunity to appear before your subcommittee at this oversight hearing on recent draft revisions to the National Park Service (NPS) Management Policies.

The NPS Management Policies provide guidance for managing the National Park System and offer the public an understanding of our management practices and goals. These policies are based on laws, Executive orders, proclamations, and regulations that govern NPS as well as departmental policies and longstanding NPS practices. This document, like the Management Policies that have preceded it, pursues the highest standard of conservation and enjoyment of our 388 park units, which now welcome over 287 million visitors a year.

The current draft document strengthens the guidance to park managers in order to ensure that there is an unequivocal commitment to the fundamental purpose of the National Park System, as set out in the NPS Organic Act of 1916, "to conserve the scenery and the natural and historic objects therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

The overarching message of this draft document is to continue improving how we manage parks "to protect park resources and values to ensure that these resources and values are maintained in as good or better condition for the enjoyment of present and future generations." Toward this end, we allow and welcome the appropriate use of parks. While we may quote particular sentences from the revised Management Policies to emphasize certain points, the document is designed to be used by managers, as a whole, to implement the mission of the NPS to protect, conserve and provide for the enjoyment of this nation's incredible cultural and natural heritage. If something in this draft document seems inconsistent with that goal, we will certainly address it.

These new draft policies maintain our strong commitment to the fundamental mission of the NPS to protect and allow for appropriate enjoyment of the parks. The policies clearly underscore that when there is a conflict between use and conservation, the protection of the resources will be predominant. For example, the draft states that "when there are concerns as to whether an activity or action will cause impairment the Service will protect the resources," and it also states that "when proposed park uses and the protection of park resources come into conflict, park managers are obligated to ensure that the purposes for which the park was created are not diminished." This is logical because inspiration and enjoyment cannot occur without the preservation of the resources.

The revision defines and welcomes "appropriate uses" and establishes a clear process for managers to use to determine what are appropriate uses. Appropriate uses are defined as "a use that is suitable, proper or fitting for a particular park, or to a particular location within a park." This definition rests within the broader park system mission mentioned above of conserving park resources and values while providing for their enjoyment so as to leave them unimpaired for the enjoyment of future generations.

The question that has been asked about this revision is "why now?" The answer is simple, yet multi-faceted. The world is changing, and we continue to strive for excellence. Excellence means improving our guidance on not only preventing impairment but on preventing "unacceptable impacts" to ensure that impairment will not be reached. Excellence means increasing the understanding of "appropriate use" and making certain that this component of the fundamental mission is not overlooked. Excellence means keeping the key management decisions in the hands of the managers by better defining "professional judgment."

Another answer to the "Why now?" question is that the existing management policies do not address "management excellence" and "sustainability" with clarity. We face an evolving context of new technologies, new homeland security challenges, and public demands for efficient and transparent management practices that affect our stewardship responsibilities. The NPS must keep pace with these changes. With changing demographics and with the ever increasing importance of our NPS stewardship, cooperative conservation, civic engagement and 21st century relevance are critical. One final answer to the "why now?" question is that some members of Congress have also expressed an interest in seeing the NPS review its policies.

Revised and improved policies are also needed because managers face continuing challenges as we preserve the parks while striving to serve our visitors and partner with our local communities. Every day, without fail, we are tested when we make decisions on what to do or what not to do; what to build or what not to build; what to allow or what not to allow. From these challenges we learn and improve our practices.

The men and women who manage our parks are some of the best in government. We ask a lot of them and they deserve good guidance. The courts have recognized that the NPS Organic Act confers on the NPS broad discretion to manage the National Park System and have left to its expertise the determination of the best approaches to achieving the Organic Act's mandate. Within the parameters of the Organic Act's "fundamental purpose," the courts have recognized that NPS may balance resource conservation and visitor enjoyment in determining where and when activities are appropriate in park areas.

The ability of an agency to remain healthy and sustainable over time lies with its willingness to honestly examine its own management practices and update them periodically to more efficiently and effectively fulfill the underlying mission. To this end, the NPS held a series of meetings with field professionals and Department of the Interior officials over the last few months. More than 100 key professional staff have worked on the document, including all of the NPS career national leadership team, many field and program managers, and the National Wilderness Steering Committee. The revised management policies, now available for public review, recognize new challenges facing the NPS, such as homeland security and greater accountability and transparency, and incorporate advancements in technology with management tools such as Facility Condition Index. The revised policies also bring existing guidance up to date with new laws such as those related to fees; new Executive Orders such as "Preserve America" and "Facilitating Cooperative Conservation"; new Director's Order #75A: Civic Engagement; and new initiatives such as the "NPS Legacy Initiative: Doing Business in the 21st Century"; and the Secretary of the Interior's "4C's of communication, cooperation, and consultation, all in the service of conservation."

The NPS Management Policies have traditionally served as the foundation for day-to-day park management decisions. For that reason, it is of paramount importance that the Management Policies provide clear and useable guidance that encourages consistency across the National Park System while celebrating the unique aspects of individual park units. In the draft Management Policies, managers will find detailed definitions of key management terms, enabling them to more clearly anticipate how resources can best be conserved while providing a positive visitor experience. These definitions ensure that park managers will always seek ways to avoid or minimize to the greatest extent practicable, adverse impacts on park resources and values.

In this draft, managers are given guidance on the NPS decision-making procedures. This includes engaging the public and using the best scientific information available when parks are planning for facilities or activities. This concept is further clarified by setting forth a list of criteria that park managers must apply, using their professional judgment, to determine what uses are appropriate in a particular park. Such criteria include, among others, ensuring that uses do not cause unacceptable impacts, create an unsafe or unhealthful environment for visitors or employees, or result in significant conflict with other appropriate uses. For example, in applying the criteria, a park manager may determine initially that a proposed activity would "result in significant conflict with other appropriate uses" and must therefore be disallowed. However, by applying a more sophisticated planning process, the manager may conclude that even small adjustments in the time or location of activities can avoid or adequately mitigate the conflict. The revised policies encourage this kind of forward-thinking management.

Another term of critical importance to park managers is impairment. The impairment standard comes from the most important statutory directives for the NPS, the NPS Organic Act of 1916 and the General Authorities of 1970, as amended. The revised Management Policies rectify an apparent inconsistency in the definition of impairment between the glossary and chapter one of the 2001 Management Policies. The draft Management Policies maintain a firm commitment to not only protect park resources and values from impairment but also to leave them in as good or better condition than they currently exist. They further describe the manager's responsibility to incorporate civic engagement, the best available scientific, scholarly, and technical information to ensure that parks are managed for appropriate use and to prevent impacts from ever reaching the level of impairment.

The revised policies place a new emphasis on management excellence in other areas, as well. One of the most important of our new initiatives, the NPS Legacy

Initiative, sets goals and objectives for management excellence, sustainability, conservation, outdoor recreation, and 21st century relevancy. These goals, as incorporated into the revised policies, will direct efforts toward areas of vital importance to the fulfillment of our mission. The revised policies have been updated by taking into account changing demographics, improving technology, new ways to enjoy parks, and better science to inform decision-making. Better baseline data on resource conditions, an improved understanding of the interrelationships within ecosystems, the use of best available technology, the application of adaptive management, and the practice of cooperative conservation may allow new uses and result in greater enjoyment, with reduced visitor use conflicts, while maintaining high conservation standards and leaving the resources in as good, or better, condition for the enjoyment of future generations.

In addition to improving the internal processes used by park managers, the revised policies recognize the benefits of external relationships, particularly in regard to partnerships and other collaborative activities. The NPS commitment to civic engagement is founded on the central principle that preservation of the nation's heritage resources relies on continued collaborative relationships between the NPS and American society. The revised policies reflect a renewed commitment to civic engagement, and collaboration with states, communities, and tribes through effective consultation, participation, and the use of science in key decision-making processes. The revised policies incorporate the guidance published in NPS Director's Order #75A: Civic Engagement and strengthen our commitment to effective public involvement. For the NPS, true civic engagement is an institutional responsibility to actively involve communities in our mission. In the revised policies, inclusive and collaborative public participation will be emphasized in the planning process, and in interpretive and educational programming. By enhancing the NPS focus on partnering with communities and neighbors, we intend to ensure that sites representing the fullness of the American experience are preserved.

National park units conserve our national treasures, and it is these unique settings that draw millions of visitors to enjoy these special places. One result of this high demand is that, at times, the NPS must make decisions that are not popular with every group and every individual. Simply put, the national parks cannot accommodate everyone's wants and needs. However, we have nearly 300 million satisfied customers each year who tell us that our decisions are most often the right ones. The NPS will work hard to maintain this high level of customer satisfaction. In addition, our partners at the state, local, and private levels also provide a wide array of opportunities for the public to enjoy the activities that cannot be accommodated in the national parks. The NPS is committed to working closely with these partners in a coordinated effort to meet the nation's needs for healthy and enjoyable recreational opportunities. The revised policies will incorporate forward-thinking, Servicewide initiatives to ensure the continued fulfillment of the mission as entrusted to us in the Organic Act of 1916.

In summary, the Organic Act continues to guide virtually all of our management actions. It creates a single NPS mission with several components, including that future generations will be able to enjoy National Park System resources only if we successfully conserve them and protect them from impairment. We think this makes good sense. In 1925, Stephen T. Mather, the first Director of the NPS agreed by saying, "The primary duty of the National Park Service is to protect the national parks and national monuments under its jurisdiction and keep them as nearly in their natural state as this can be done in view of the fact that access to them must be provided in order that they may be used and enjoyed." By managing park resources wisely, by evolving and adapting our policies to keep the parks relevant to the public we serve, we ensure that future generations will have the same opportunities for enjoyment of park resources that we have today.

The revised management policies focus on the protection of park resources and provide a clear reflection of the agency's longstanding commitment to public enjoyment. The proposed areas of change will improve the way parks are managed, conserved, and enjoyed for the benefit of present and future generations.

That concludes my statement, and I will be happy to answer any questions you or other members of the subcommittee may have.

Senator THOMAS. Thank you very much. It is good to have an old friend from Teton Park here.

Mr. MARTIN. Yes. Who would have thought it, right?

[Laughter.]

Senator THOMAS. Whatever that means, yes.

Mr. Galvin, good to see you, sir.

**STATEMENT OF DENIS GALVIN, FORMER DEPUTY DIRECTOR,
NATIONAL PARK SERVICE (RETIRED), ON BEHALF OF
BOARD OF TRUSTEES, NATIONAL PARKS CONSERVATION AS-
SOCIATION**

Mr. GALVIN. Senator Thomas, it is a pleasure to be back before the subcommittee again. Today I represent the National Parks and Conservation Association, a 300,000-member support group for the National Park Service and the National Park System.

I have enjoyed my work with this subcommittee to improve and expand our superlative National Park System over the years.

I have a prepared statement that comments in detail on the chapter 1 changes proposed to the current 2001 edition of the management policies that “set the framework and provide direction for all management decisions affecting the National Park System.”

In 1988 and 2001 as Deputy Director, I coordinated the process that led to the new editions of these policies, to the current edition, 2001. I also did that for 1988. It was initiated and implemented by the National Park Service.

This process, by contrast, was initiated outside the National Park Service. Its first result was rejected. Subsequently, national park professionals, many my former colleagues, performed heroically to rescue that effort. Regrettably the end result of that effort still falls short.

Policy has a long history, starting with Secretary Lane’s letter in 1918. I have examined many subsequent versions. They exhibit a remarkable consistency. The 2005 draft does not meet the level of protection of its predecessors. The 2001 document is better and should be retained. The current process is flawed and should be abandoned.

If a revision is needed, it should begin with a scoping process that is clear about the reasons for change. The informal reasons for change cited by officials in the media, cell towers, base jumping, et cetera, are contradicted in the draft currently being reviewed.

I have several documents referenced in my prepared statement that I would like to submit for the record that were pulled off the National Park Service web site that go into the history of the interpretation of impairment.

I will mention only two sections that are covered in my prepared statement. Subsection 1.4.3 of chapter 1, which is called The Foundation, discusses the fundamental purpose of the National Park System. That is the title of the subsection, “the fundamental purpose of the National Park System.” The existing 2001 language says: “When there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant.” The 2005 draft eliminates that statement. In the same subsection, “the fundamental purpose of national parks,” it substitutes: “The Service must balance the sometimes competing obligations of conservation and enjoyment in managing the parks.” That lowers the longtime standard for managing national parks. I can find no instance in reviewing over 80 years of policy statements where the word “balance” was used to discuss the fundamental purpose of our park system.

A new subsection, 1.4.3.1, my colleague, Deputy Director Martin, mentioned is a new and hopeful attempt to define “appropriate

use.” However, in the execution, some of the criteria are troubling. My prepared statement mentions the removal of concessions facilities and other administrative facilities from giant forests in Sequoia National Park. There we were cutting the roots of 3,000-year-old trees to prolong the existence of substandard 80-year-old facilities. The successful completion of this project is a success that can be claimed by many, including this subcommittee. It was enthusiastically supported by the public. As I read this draft, I wonder if we would have undertaken the project. It certainly disrupted the operation of park concessions and certainly ended a use that occurred historically.

In my career, I had an informal test for appropriate use. It was two simple questions. What is it doing to the resource, and what is its affect on current and future enjoyment? If the answer to either of those questions raised a red flag, I knew the approach should be truly conservative. The standard of the Hippocratic Oath applied: “First, do no harm.”

One of the pleasures of retirement has been to visit national parks. I have hiked the battle lines of Gettysburg, enjoyed the tranquility and meaning of Appomattox, seen people from New York City on a Sunday afternoon fill the picnic areas at Delaware Water Gap, returned to Yosemite National Park and Sequoia, the first parks I worked in in the National Park System. These experiences affirm that we have a great park system enjoyed by hundreds of millions of our citizens. It is not locked up. Its quality is a bequest from past generations. This generation owes it to the future to maintain the standards that have made it great.

Thank you, Mr. Chairman. I would be glad to answer questions. [The prepared statement of Mr. Galvin follows:]

PREPARED STATEMENT OF DENIS GALVIN, FORMER DEPUTY DIRECTOR, NATIONAL PARK SERVICE (RETIRED), ON BEHALF OF BOARD OF TRUSTEES, NATIONAL PARKS CONSERVATION ASSOCIATION

Mr. Chairman, and other distinguished Members of the Subcommittee; it is a pleasure to be back before this Subcommittee again. I recently retired from the National Park Service after a 38-year career, during which I served as, among other positions, park engineer, manager of the professional architecture and design center, associate director, and deputy director. I have actively participated, as a career professional, in the agency's interpretation and implementation of the 1916 NPS Organic Act, and all of the other laws given to the NPS to carry out, at the field, regional, and headquarters levels on a day-to-day basis for more than three decades, including development of the 1988, and 2001 editions of NPS Management Policies, the official manual that guides the agency's day-to-day work under these laws.

As is valid for all public laws and all public agencies, it is appropriate for this Subcommittee to exercise its oversight responsibilities to periodically assess how the National Park Service is doing in carrying out the statutory mandates that it has been given by the Congress and Presidents, and NPCA is pleased to play a role in supporting that effort on your part. We welcome your oversight, but strongly believe that the Administration has shown NO need for the broad and comprehensive changes that they propose to make in NPS Management Policies.

NPS IS ON TARGET UNDER THE LAW, BUT LOSING GROUND

The fundamental re-interpretation of the Organic Act that is being proposed in the rewrite of the *Management Policies* does not make it a better document for agency manager's guidance. In fact, the proposed changes would remove the clear guidance of the 2001 edition, and replace it with muddy, unclear, and too-broad discretion left to NPS managers and Administration appointees, to judge what is and is not appropriate use of the national parks. A clear service-wide standard for day-to-

day management decision-making is proposed to be replaced with a much broader range of choices.

There is clearly NO need to amend the NPS Organic Act, or any of the other laws governing how our national parks are intended to be managed. The Organic Act has endured soundly for 90 years, and will probably be good for another 90 years, at least.

Likewise, there is NO need to re-write Management Policies. For those narrow subjects that the Administration has asserted were not addressed in the 2001 edition (homeland security, cell towers, succession planning, etc.) the issuance of specific Director's Orders is the operative process already in place to take care of it.

What is needed is for the broad constituency of interests that are engaged with the National Park Service— recreation, tourism, gateway communities, conservation, preservation, and regular “good citizens”—to step up their support for their national parks as they are, and as they are intended to be, preserved unimpaired for future generations to enjoy. Special interests must give way to the national interest if the national parks are to flourish in the future.

In 1918, Secretary of Interior Franklin Lane articulated the core management policy for the NPS, which endures today, *“First, that the national parks must be maintained in absolutely unimpaired form for the use of future generations as well as those of our time; second, that they are set apart for the use, observation, health, and pleasure of the people; and third, that the national interest must dictate all decisions affecting public or private enterprise in the parks.”*

THE THREAT OF GENERICA

At the White House Tourism Conference here in Washington D.C. several weeks ago, attended by invited state delegates and key tourism industry leaders from all 50 states, the opening day keynote speaker said that the greatest threat to American tourism is the *“Threat of Generica”*—the homogenization of natural and cultural landscapes across the Nation by commercialization. Another major speaker said that the counter force to the threat of generica is “geo-tourism”—more than eco- or sustainable-tourism, this new philosophy being adopted and embraced by the tourism industry itself, calls for sustaining the real places in America, retaining, restoring and sustaining the geographical character and integrity of a place. That is what will continue to draw tourists—and the units of the National Park System are already the very core, the essence, of this geo-tourism. The national parks can, if adequately funded and staffed, continue to lead this economic engine for America into the future.

For high quality tourism to be sustained in America, already the second or third largest economic driver in the USA, nothing is more important than preserving the unique natural and cultural places that make up the National Park System, unimpaired.

APPROPRIATE RECREATION

Nearly 300 million people visited the parks last year, and we know from surveys that they “enjoyed” them. NPS concessionaires grossed over \$1 Billion in 2004; surrounding gateway communities and businesses grossed over another \$11 Billion attributable to national park visitors. Despite this, there are those who suggest that NPS management of the parks is TOO RESTRICTIVE, or that the parks are LOCKED UP, or lack ACCESS. Nothing could be further from the truth.

Nevertheless, some want to engage in thrill-type recreation activities, mostly in various types of motorized vehicles, in the national parks. Some (but far from all) park gateway communities complain that they could draw in more tourists if the NPS were “less restrictive” of various uses. These types of demands would seek to kill the goose that lays the golden egg, and must be rejected or ignored.

The national parks do not have to sustain all recreation; that is why we have various other federal, state, local, and private recreation providers to share the demand, and to provide for those types of recreation that generally do not belong in the national parks, or that must be carefully limited. The 1916 NPS Organic Act, emphasizing conservation for future generations, is substantially different from the organic laws of the Bureau of Land Management, the US Forest Service, the US Fish and Wildlife Service, the Army Corps of Engineers, or any other federal agency. The NPS mission is also different from that of state park agencies, or of county or city park agencies. Together, these agencies provide for many forms of public recreation—but not all forms of recreation are appropriate in national parks.

BALANCING USE WITH PRESERVATION IN DAY-TO-DAY MANAGEMENT
OF NATIONAL PARKS

Over the 90 years history of the NPS, there has been much debate over whether the NPS is achieving the proper balance between uses of the parks for today, and conserving them unimpaired for future generations. These conflicts usually erupt over day-to-day management of particular parks, and the decisions that the NPS makes as it goes through periodic management planning. It is crucial to this discussion, however, to note *that there is no credible debate over whether parks should be used by the American people, the debate centers on how the use occurs, or sometimes when or where.*

- The snowmobile controversy in Yellowstone would be far less significant if there were no impacts on wintering bison and trumpeter swans;
- The off-road vehicle debate at Cape Hatteras would be moderated if there were no impacts on breeding birds, or if more of the beaches were limited to pedestrian use;
- Shenandoah National Park staff could be less involved with opposition to adjacent power plants if emission controls under the Clean Air Act were being enforced at a higher standard, and if the scenic vistas from the park's overlooks were as clear as they were 50 years ago;
- NPS staff at Mojave National Preserve, where hunting is allowed by law, oppose the artificial wildlife watering holes, known as guzzlers, not because they oppose hunting, but because these devices dry up the natural springs at higher elevations, and concentrate wildlife unnaturally, exposing them as easier targets to both natural and human hunters;
- Professional NPS staff at Glacier Bay National Park limit the number of cruise ships allowed in the park at a time, both due to impacts on whales and other wildlife, and to maintain the quality of the visitor experience, both for cruise ship passengers and other park boaters;
- The buildings and associated utility lines for the Giant Forest Lodge in Sequoia National Park were killing the big trees, so NPS had them removed, and had its concessions partner, Delaware North, build a brand new lodge in a better location, still serving the visitors, but without impact to the giant Sequoias.

For the NPS professionals, conserving the parks unimpaired for future generations is synonymous with offering park visitors today a high quality experience. Scenic vistas should be clear, natural sounds should dominate over man-made noises, native wildlife should be abundant and visible for visitors, historic sites such as battlefields should look like they did when the historic events occurred, park visitor facilities should not be located so as to disturb the natural scene or the cultural landscape.

Viable alternatives to expanded use and commercial development in parks should be provided outside the parks, on other public lands, or in gateway communities. Natural and cultural resources of the units of the National Park System must be maintained and in some cases improved. Preservation is the key to continued success of the NPS in fulfilling its statutory mandate, and also to sustaining the core destinations that fuel the tourism industry.

INTERPRETING THE NPS ORGANIC ACT

It is the task of professional NPS managers, through the public process, to determine what is appropriate and what is not in the National Park System units. The "litmus" test for distinguishing between the permissible and the impermissible begins with the 1916 NPS Organic Act itself, and the key statutory provision that states that:

(The National Park Service) shall promote and regulate the use of the Federal areas known as national parks, monuments and reservations hereinafter specified . . . by such means and measures as conform to the fundamental purpose of the said parks, monuments and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

Simply put, the NPS Mission is to provide for enjoyment of the parks in a manner that leave them unimpaired. Uses that impair the parks are illegal. Giving a precise definition to the term "impairment" is the job of the NPS career managers who are charged with implementation. In addition, federal courts have also rendered opin-

ions that interpret the “impairment” provisions, and in every case, have agreed with the current interpretation.

Congress has clarified its intent in statutory use of the term “impairment” only once, in the 1978 amendment to the NPS General Authorities Act, which states that

Congress declares that the national park system, which began with establishment of Yellowstone National Park in 1872, has since grown to include superlative natural, historic, and recreation areas in every major region of the United States, its territories and island possessions; that these areas, though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States; and that it is the purpose of this Act to include all such areas in the System and to clarify the authorities applicable to the system. Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 2 of this Act, shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916 to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress.

Current NPS policy is to interpret the 1916 “non-impairment” standard, and the 1978 “non-derogation” standard as having the same meaning and intent. That little has changed since the NPS was established and given the task of managing the national parks can be seen in the similarities between the first NPS policy statement interpreting the Organic Act, which stated that:

Every activity of the Service is subordinate to the duties imposed upon it to faithfully preserve the parks for posterity in essentially their natural state,

and the language from the 1978 Senate Committee Report on the General Authorities Act amendment that stated that:

The Secretary has the absolute duty, which is not to be compromised, to fulfill the mandate of the 1916 Act to take whatever actions and seek whatever relief as will safeguard the units of the national park system.

In the concluding paragraph to “The National Park Service Act of 1916: A Contradictory Mandate?” the late Dr. Robin Winks, Yale History Dean and former Chairman of both the National Park System Advisory Board and NPCA Board of Trustees, clearly articulates his conclusion that there is no contradiction in the clear intent of Congress in the 1916 Act, and that resource preservation trumps access and use when the two conflict in the determination of the professional managers of the parks.

Arguably the intent of Congress with respect to any single act cannot be perfectly divined or proven. The intent of Congress across a number of related acts, and as adumbrated by other acts that bear upon the related group, may more nearly be understood. The paper has attempted to judge that intent. It has argued that the language contained in the preamble to the National Park Service Act of 1916 is not, in fact, contradictory; and that Congress did not regard it as contradictory. . . . Further, it is argued that subsequent legislation, and numerous interpretations of related legislation by the courts . . . sustain the view that there was and is not inherent contradiction in the preamble to the Act of 1916. The national Park Service was enjoined by that act, and the mission placed upon the Service was reinforced by subsequent acts, to conserve the scenic, natural, and historic resources, and the wild life found in conjunction with those resources, in the units of the National Park System in such a way as to leave them unimpaired; this mission had and has precedence over providing means of access, if those means impair the resources, however much access may add to the enjoyment of future generations.

(Attached to this testimony is a copy of Dr. Winks' paper, "The National Park Service Act of 1916: A Contradictory Mandate?", submitted for the Hearing Record.)* www.nature.nps.gov/Winks/

Day-to-day management of a national park is complex, as is determining whether a particular type or amount of use would cause impairment, and thus not be allowed to occur in the park. The sound judgment of the career NPS park professional is the best means we have to make this determination, coupled with a public process that allows the American people to understand the complications and competing interests. Putting the national interest, and the long-term benefit to the park's resources, ahead of the immediate accommodation of use has always been and should continue to be, the primary factor indicating the right decision for park managers to make.

THE ADMINISTRATION HAS NOT MADE A CASE FOR PROPOSED REVISIONS TO
MANAGEMENT POLICIES, CHAPTER I, THE FOUNDATION

Overview

From the first NPS Management Policies, issued in 1918, up until the most recent edition, issued in 2001, the process of policy development has followed a fairly common routine, with the periodic (every 10 years or so) review of existing NPS policies being initiated by the professional rank and file employees of the NPS, due to recent changes in law, federal court decisions interpreting law, or exposure to new scientific information.

Management Policies are primarily to give clear direction to the professional managers of the NPS so that there is consistent adherence to policy service-wide, and so that each manager has a clear and comprehensive basis for understanding what he/she is to consider when making management decisions. On the other hand, regulations are promulgated to enable enforcement of laws and policies on park users. These two tools, policies and regulations, must be consistent and clear, if NPS managers are to be able to do their jobs.

For purposes of this hearing, we will focus our comments on a comparison of *Chapter 1: The Foundation* from the 2001 edition of *Management Policies* to the changes proposed in the current draft of Chapter 1 that are out for public comment. During the public comment period, we will develop a thorough and detailed, line-by-line analysis; for the present, a review of *Chapter 1* will be sufficient.

The interpretation of the NPS Organic Act that is contained in the proposed new version of *NPS Management Policies* is misguided. It misinterprets the intent of Congress, it ignores numerous federal court decisions, and it greatly weakens the professional judgment of the NPS career managers that have worked under the various NPS laws for over 90 years. Our analysis of key sections of Chapter 1 follows:

The Foundation

Chapter One of the 2001 edition of *Management Policies* is entitled *The Foundation* and is intended to give additional clarity to the clear purpose of the National Park Service as stated in the 1916 NPS Organic Act.

The 2001 edition of *Management Policies* gave a very detailed and clear articulation of how to interpret the 1916 Organic Act's basis mandate. In contrast, the new draft significantly muddies the waters, and has the effect of letting each manager judge for him/herself whether a particular use or form of enjoyment is appropriate or not, and will or won't cause impairment, without the clear guidance that the 2001 edition of *Management Policies* provide.

The fundamental purpose of NPS, as set by the 1916 Act, is to promote and regulate uses that do not impair parks, and prohibit all others. Yes, the NPS mission is about use and enjoyment, but these are types, amounts, and even timing of uses that are first judged to be compatible with conserving park resources unimpaired.

By all accounts, including NPS-commissioned visitor surveys, the hundreds of millions of people who visit the parks annually enjoy these parks. But, due to NPS management, certain uses that certain people might also enjoy in the parks are prohibited. It seems that these new proposed changes to *Management Policies* are intended to make it more difficult for NPS to prohibit some types of uses that it heretofore has done. The changes lower the standard by which appropriate uses are judged, by adding a variety of qualifiers, modifiers, and vague, fuzzy guidelines to what were previously much more clear guidelines for judging appropriateness.

* Retained in subcommittee files.

1.4.3 The NPS Obligation to Conserve and Provide for Enjoyment of Park Resources and Values

The 2001 edition of *Management Policies* clearly defines the 1916 Organic Act's "fundamental" purpose of the NPS as two-fold:

- 1) to affirmatively conserve park resources and values all the time, even where there is no particular threat or risk at the moment; this is a mandate for proactive, not just reactive park natural and cultural resource management. When Congress added the mandate for reliance on scientific research to guide park management in the 1998 Thomas Bill (P.L. 105-391), Congress was essentially directing the NPS to assure that its actions would continue to conserve park resources and values, based on the findings of park-based applied research,¹ not just in response to user-caused impairments.
- 2) To provide for enjoyment, but only enjoyment that occurs in a manner or means that leaves the park's resources and values unimpaired.

The 2001 Edition further states, "NPS managers must always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values." Avoiding adverse impacts is necessitated by both the first element of the single purpose, as well as the second element.

The proposed draft significantly revises the interpretation of the Organic Act by treating its mandate as a balancing act between conservation of resources and values and visitor enjoyment. "The Park Service recognises that activities in which park visitors engage can cause impacts to park resources and values, and the Service must balance the sometimes competing obligations of conservation and enjoyment in managing the parks."

This interpretation of the Organic Act's fundamental purpose for the NPS is not accurate. While there is clearly a difference between impacts and impairments—NPS may permit certain impacts to park resources and values so long as they are not impairments—the professional judgment that is called for to distinguish between impacts and impairments is clearly different than one that seeks to balance use with conserving . . . unimpaired.

By eliminating the separate Organic Act requirement to conserve park resources and values, the proposed draft relaxes the standards by which a park manager would judge the condition of park resources and values. The draft replaces the phrase "adverse impacts" used in the 2001 edition with the term "unacceptable impacts," a far more indefinite term, that leaves the park manager with little guidance, broad discretion, and an expectation that he or she will "balance" use with conserving . . . unimpaired.

In fact, the park manager does not have "broad discretion" as it is defined in the proposed draft. While federal courts have shown deference to the federal decision-maker in questions about defining impairment, these same courts have universally upheld the paramount mandate of the Organic Act to conserve park resources and values unimpaired, even to the extent of reducing or eliminating a particular form of use.

The proposed draft adds two new subsections, on "1.4.3.1 Appropriate Use," and "1.4.3.2 Unacceptable Impacts," both of which seek to emphasize that balance is required under the Organic Act. Both subsections are comprised of lists of items that would be acceptable or unacceptable uses, but this approach is only valid if you assume that the NPS park manager's only obligation is to balance use with resource conservation.

Another new subsection "1.4.3.3 Park Purposes and Legislatively Authorized Uses" in the proposed draft properly distinguishes between mandated uses and authorized uses, but fails to note that authorized uses are discretionary with the NPS manager and may be prohibited if the manager judges the impacts of such use to be unacceptable.

Curiously, this section fails to note the important fact that individual park enabling statutes sometimes have the effect of modifying the applicability of the Organic Act to a specific park or aspect of management of that park. This was a hallmark feature of the 1988 edition of *Management Policies* which was carried forward into the 2001 edition. The proposed draft seems much more intent on allowing maximum manager discretion than in adhering carefully to the intent of Congress.

¹Section 202 of P.L. 105-391 states that "The Secretary is authorized and directed to assure that management of units of the National Park System is enhanced by the availability and utilization of a broad program of the highest quality science and information." Section 206 states, in part, "The Secretary shall take such measures as are necessary to assure the full and proper utilization of the results of scientific study for park management decisions."

1.5 External Threats and Opportunities

This section of the 2001 edition of *Management Policies* has been completely eliminated from the proposed draft, apparently in keeping with the Administration's policies that the NPS authority and responsibility stops at the park boundary. While it is true that NPS' direct authority is much reduced outside park boundaries, there are numerous other laws, including the Clean Air Act and the Surface Mining Act that mandate special protections for national parks, and that afford the NPS a measure of responsibility in determining the extent of impacts to park resources and values.

Elimination of this section is a significant deficiency of the proposed re-write of *Management Policies*.

In substitution, the new draft adds a new section entitled "Cooperative Conservation Beyond Park Boundaries." While this is a good addition as it is proposed, it in no way substitutes for the 2001 edition's section on External Threats. They address two very different things. As noted in numerous previous studies, the majority of external threats to national park resources and values are caused by the actions, or inactions, of other federal agencies, and need a directed and aggressive response from the NPS.

"Cooperative Conservation" as it has been defined by Secretary Norton has been primarily focused on actions that can be taken by the NPS, and other land managing agencies, to work constructively with neighboring landowners, especially private landowners, and adjacent gateway communities. This is a good policy as far as it goes, but does not address the elimination or mitigation of external threats to park resources from other federal agencies. Both sections are needed in *Management Policies*.

1.7 Management Excellence

This section of the proposed draft is greatly expanded from the 2001 edition of *Management Policies*, some of it appropriate, and some of it curiously inappropriate, and most of it better placed elsewhere in the follow-on Chapters of the document.

1.7.2 Accessibility for Persons with Disabilities

This subsection, while important overall to NPS facility design, belongs in portions of Chapter 8 Use of the Parks, and Chapter 9 Park Facilities, rather than in the Foundation Chapter, which should remain focused on interpretation of the Organic Act. This subsection will also likely be subject to significant re-writing in the near future, when the federal Access Board promulgates its long-awaited regulations and guidelines on access to recreation facilities, and to outdoor developed areas.

1.7.4.4 Facilities Management, 1.7.4.5 Business-like Concession Program, 1.7.4.6 Budget Performance and Accountability Programs, 1.7.5 Human Capital, 1.7.5.1 Career development, Training and Management, 1.7.5.2 Succession Planning, 1.7.5.3 Workforce Planning, 1.7.5.4 Employee Safety and Health, and 1.7.5.5 Workforce Diversity

These are all new subsections of the proposed draft, and do not belong in Chapter 1, some do not belong in Management Policies at all, but certainly are misplaced, and seem only to serve to dilute the focus of Chapter 1 away from what was heretofore its main purpose, to explain and interpret the fundamental law of the NPS, the 1916 Organic Act.

1.9 Partnerships

While the Partnership section is generally good and parallels the 2001 edition, a significant addition has been proposed which could impact the integrity of the National Park System if it were to be implemented as stated.

The problematic statement reads "In the spirit of partnership, the Service will also seek opportunities for cooperative management agreements with state or local agencies that will allow for more effective and efficient management of the parks, as authorized by section 802 of the National Park Omnibus Management Act of 1998."

However, section 802 of the National Park Omnibus Management Act of 1998 specifically and exclusively authorizes cooperative agreements with adjacent state and local park agencies, not just any state or local agency, and was intended to appropriately take advantage of opportunities for shared management responsibilities where adjacent land managers have similar missions and purposes.

As proposed, the language of this subsection is much too broad, opening the proverbial Pandora's box of opportunities to dilute and diminish the resources and values of the national parks.

Thank you for the opportunity to testify here today, and I would be happy to answer any questions.

Senator THOMAS. Thank you, sir.

Mr. Horn, it is nice to have you back, sir.

STATEMENT OF WILLIAM P. HORN, FORMER ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. HORN. A pleasure to be back, Mr. Chairman. Thank you for this opportunity to testify on National Park Service management policies.

For background purposes, I had the privilege as serving as Assistant Secretary for Fish, Wildlife and Parks from 1985 to 1988 and, in that capacity, personally oversaw and participated directly in the rewrite of the management policies that culminated in the 1988 version that stayed in force and effect until 2001.

I think it is safe to say that we are blessed with an incomparable National Park System that is used, enjoyed, and cherished by millions of our citizens, and maintaining and enhancing this public support is the key to assuring the long-term conservation of this system. To that end, I commend the National Park Service and the Department for seeking to amend its management policies to be more consistent with the 1916 National Park Organic Act and correct the deficient features of the 2001 version of these same policies.

Now, the starting point of all of these discussions has got to be the mandate set forth by Congress in the 1916 Organic Act, which is simply to conserve park resources and to provide for use and enjoyment of the same. Sound management policies must faithfully track the law, and particular attention needs to be paid to the specific language that Congress adopted nearly a century ago. The mandate is articulated as a single purpose. The language in the statute is "which purpose is." It is not two purposes with one primary and the other subordinate.

Congress also prescribed in 1916 that resources be conserved, not preserved.

And last and of critical importance is the express purpose of conserving these resources and leaving them unimpaired. To quote the statute, that is to assure "for the enjoyment of future generations." From a close reading of the statute, it is very evident that public use and enjoyment is inextricably embedded in the single fundamental purpose of our park system, and the 1916 Act, read as a whole, is a mandate for an active management program to facilitate such use and enjoyment.

Now, the only subsequent prescription that arises from the 1916 Act is to assure that park resources are "unimpaired." Now, advocates of public use restrictions invariably define impairment so broadly that many traditional activities can be deemed to cause impairment and therefore be prohibited. For example, the Clinton administration's 2000 rewrite of the NPS policies at section 1.4.5 disturbingly singled out three kinds of activities as sources for impairment: "visitor activities," "NPS activities in the course of managing a park," and "activities undertaken by concessioners, contractors, and others operating in the park."

The disconnect between the Organic Act and the 2001 policies is illustrated by the fact that these specific activities are expressly authorized in sections 1 and 3 of the 1916 Act. Nonetheless, despite their express representation and provision in the 1916 Act, they were tagged as the sources of impairment in the 2001 management policies. In my mind, that is a clear element of disconnect that was worthy of correction.

The Organic Act was enacted with specific contemplation that some resource impacts would attend visitor use and enjoyment. Imagine today trying to build a fraction of Yellowstone's 200-mile loop road system or even one of its historic hotels or lodges. It is an absolute certainty that alleged impairment would be the basis for objections to this form of visitor development. Obviously, Yellowstone's roads and visitor service centers have an impact. Yet, it was decided years ago, consistent with the Organic Act standard, that such impacts were acceptable to facilitate reasonable levels of public use and enjoyment. And I think it is clear that the vast majority of Americans would still agree that the effects of these developments do not constitute an illegal impairment of Yellowstone's wonderful resources.

Accordingly, the term "impairment" must be defined reasonably and consistently so it does not become a weapon to be used against the use and enjoyment mandate from the basic Organic Act. The definition proposed in the new management policies in my opinion better reflects the law and the need for balance, consistent with the single purpose articulated by Congress in 1916.

Now, let me close with a plain observation about the political process and the National Park Service's policies. Under the Clinton administration, the management policies were written, rewritten with strong guidance from then Assistant Secretary Bob Herbst. In 1987 and 1988, as Assistant Secretary, I directly oversaw and personally and actively participated in the rewrite that culminated in the 1988 policies. In the 1999-2000 period, President Clinton's appointee, then Assistant Secretary Don Berry, also personally participated and oversaw the process that produced the 2001 management policies. To suggest somehow that active participation and guidance from the Assistant Secretary's office is unprecedented is frankly utter nonsense. Complaints about politics being involved in this remind me of the famous line in Casablanca about I am shocked there is gambling going on here. There has always been active political participation over the last 20 years in all of these rewrites because of the issues that are involved. People care deeply about these things.

Let me just say this. If Deputy Assistant Secretary Paul Hoffman's participation in this process makes him guilty, then I think you better outfit former Assistant Secretaries Herbst, Berry, and myself for orange jumpsuits as well.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Horn follows:]

PREPARED STATEMENT OF WILLIAM P. HORN, FORMER ASSISTANT SECRETARY FOR
FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR

Mr. Chairman: My name is William P. Horn and I appreciate the invitation to appear before the Subcommittee to discuss National Park Service (NPS) Management Policies.

INTRODUCTION

It was my privilege to serve as Assistant Secretary for Fish, Wildlife and Parks under President Reagan and work on the development and articulation of appropriate NPS management policies consistent with the 1916 National Park Organic Act. We are blessed with an incomparable National Park System that millions of our citizens use, enjoy and cherish. Maintaining and enhancing this broad public support for our Park System through sound management is the key to assuring the conservation of its resources for future generations.

Any inquiry into NPS Management Policies must start first with the 1916 Act. Its basic mandate is to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations” and management policies and actions must adhere to and fulfill that mandate. Unfortunately, there are interests and advocates who seek to effectively rewrite this basic statutory mandate and impose park policies that focus on only one half of the original Congressional admonition. These same interests often pose the basic policy issue in a form overtly hostile to traditional visitor use: “are we wise enough to support” management that “preserves natural wonders for our children by preserving them from us.”¹ Contrary to these interests, Congress has never intended that parks be managed as “biospheres under glass” or managed in an exclusionary manner.

Management policies that genuinely reflect the law must provide an appropriate balance that recognizes both elements of this single mandate. To achieve this goal, it is critical that the 2001 NPS Policies be rewritten in manner consistent with the Organic Act. As detailed later in this statement, the 2001 Policies misrepresented the 1916 Act from the outset and irretrievably set those policies on a wrong and illegal course. I commend the leadership at NPS and Interior for engaging in the legally necessary rewrite of NPS policies.

1916 ACT

The 1916 Act was the product of four years of intense Congressional deliberations involving critical opinion leaders of the day such as Frederick Law Olmstead, Jr. (the designer of New York City’s Central Park) and Stephen Mather (later first Director of the National Park Service). Although National Park units had been in existence since 1872 (i.e., Yellowstone), there was no unified management of these units nor any mission statement to govern and direct management. Indeed, there was no National Park Service and units like Yellowstone were administered by the U.S. Army. A battle was also underway to resolve whether parks management should be lodged within the Department of the Interior or committed to the U.S. Forest Service, created in 1905, then headed by Chief Gifford Pinchot. The 1916 Act was designed to correct these deficiencies and resolve this critical bureaucratic dispute.

In addition, President Teddy Roosevelt’s bold actions and articulation of conservation policy were already a decade old. The National Forest System and the U.S. Forest Service had been created. Similarly, Roosevelt had begun the National Wildlife Refuge System in 1903 dedicated to conserving biological (i.e., fish and wildlife) resources. The nascent Park System had just suffered the bruising Raker Act battle that authorized the construction of Hetch Hetchy Dam within Yosemite National Park. Park proponents wanted to maintain the impetus from the Roosevelt years and protect against other Hetch Hetchy’s.

Two of the primary interests supporting the 1916 Act were the railroad and automobile industries. The Act was seen as a means of facilitating opportunities to enjoy scenic vistas and encourage tourism. Only the year before, Yellowstone’s road system, built by the U.S. Army, had been opened to auto traffic with much fanfare.

It is reported that Olmstead authored the basic mandate included in the Act: “. . . the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C. § 1, Aug. 25, 1916. Particular attention must be paid to the specific language adopted by Congress. Note first that it is articulated as a SINGLE PURPOSE (i.e., “which purpose is”); it is not two purposes with one primary and the other subordinate. Congress also prescribed that resources be “conserved” rather than “preserved.” The term “conservation,” as articulated in that era by the likes

¹ F. Cheever, 74 Den. U. L. Rev. 625, 1997.

of Teddy Roosevelt, included elements of use in contrast to the more preservation-oriented rhetoric of John Muir, founder of the Sierra Club. Note too that the resources singled out for conservation are tangible matters: scenery, natural and historic objects, and wild life. Of critical importance is the express purpose of conserving resources and leaving them unimpaired: to leave them in that state “for the enjoyment of future generations.”

Public use and enjoyment is inextricably embedded in the single fundamental purpose of our Park System. Moreover, ensuring future use is the underlying purpose of the non-impairment standard. To argue that “resource preservation” is the single, dominant overarching purpose of the 1916 Act, to the detriment of visitor use and enjoyment, is simply wrong and not borne out by a close reading of the actual statutory language.

The debate over section 1 always focuses on its famous last phrase. Additional meaning, however, can be gleaned from earlier parts of the provision. The beginning of the sentence gives the charge to the then new National Park Service: “The service thus established shall PROMOTE AND REGULATE THE USE of the Federal areas known as national parks.” (Emphasis added.) A statute that expressly admonishes NPS to promote use and assure visitor use and enjoyment can hardly be read to authorize exclusionary preservation policies.

A close reading of section 3 of the Act further demonstrates “preservation” per se was far from the minds of the 1916 Congress. Section 3, still part of the U.S. Code (16 U.S.C. § 3), expressly authorizes forest management when needed to “control the attacks of insects of diseases or otherwise conserve the scenery or the natural or historic objects” in any park. Similarly, it provides authority for the “destruction of such animals and of such plant life as may be detrimental to THE USE OF any said parks.” (Emphasis added.) In addition, the section provides the original authorization for the concessions program to facilitate public use and allows grazing within parks, except Yellowstone, when deemed “not detrimental” to the primary purpose for which a park is created. Overall this is a mandate for an active management program to facilitate public use and enjoyment of the Park system. No intellectually honest reading of this Act can support the notion of treating large “natural” units of the Park System as unmanaged, untouched biological preserves with visitors to be kept on the other side of the glass or fence.

1978 ACT

Congress supplemented the 1916 mandate with 1978 amendments to the Organic Act by enacting a key sentence in a new section: “The authorization of activities shall be construed and the protection, management; and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for these areas have been established. . . .” 16 U.S.C. § 1a-1. Federal courts have essentially deferred, pursuant to the Chevron standard, to a permissible agency interpretation that this language provides more emphasis on resource conservation. I would note though that Congress did not amend the original section 1 language and added this supplemental provision in a separate section of the law. It creates no conflict with the original mandate other than to add a new term, “derogation”, which many construe as a synonym for “impairment.” The proposed Management Policies appropriately, and permissibly, treat these terms as one standard. (See 1.4.2).

MANAGEMENT POLICIES

It is critical the NPS Management Policies 2001 be rewritten consistent with the 1916 Act. Those policies got the law wrong from the very outset: the opening “Foundation” of the policies states “The National Park Service must manage park resources and values in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.” It is intellectually dishonest, and contrary to law, to deliberately delete from this paraphrase of the Organic Act the express references to the “enjoyment of the same.” The 2001 Policies distort the law from the very beginning and never recover. In contrast, the proposed Policies accurately reflect the actual law and Congressional intent. (See 1.1). By getting it right from the start, the proposed Policies do not veer off from the course charted by Congress nearly a century ago.

IMPAIRMENT

The only substantive prescription in the 1916 Act is to assure that park resources are “unimpaired” and definition of this term has become key. Those seeking to restrict public use and enjoyment invariably define “impairment” so broadly that a

vast array of traditional park visitor activities can be deemed to cause impairment and, therefore, be prohibited. For example, the Clinton Administration's rewrite of NPS Management Policies stated "AN IMPACT TO ANDY PARK RESOURCE OR VALUE may constitute impairment." (Emphasis added.) NPS Management Policies 2001, 1.4.5.

The same policies go on to provide that an "impact" that simply "affects" a resource or value can also constitute impairment. *Id.* Lastly, any impact that "would harm the integrity of park resource or values" is proscribed although "integrity" is never defined. *Id.* The 2001 Policies disturbingly note only three kinds of activities that might cause impairment: "visitor activities"; "NPS activities in the course of managing a park"; and "activities undertaken by concessioners, contractors, and others operating in the park." These are the specific activities expressly authorized in sections 1 and 3 of the 1916 Act (public use and enjoyment, park management to facilitate use, and concessions). Policies that contradict specific Congressional directives are clearly illegal and a rewrite of these misdirected provisions is needed.

As previously noted, the purpose of the non-impairment standard is to conserve resources for future visitor enjoyment. Clearly, the Organic Act was enacted with specific contemplation of active programs to facilitate use and enjoyment and with the clear understanding that some levels of impact or effects on resources would be fully acceptable in pursuit of this objective. It is noteworthy that Yellowstone's road system was upgraded and opened to automobiles in 1915. At the same time, that Park included a number of grand Victorian hotels to accommodate the public. Demonstrably this kind and level of development was deemed fully acceptable by the drafters of the non-impairment standard especially since Stephen Mather went on to press successfully for similar development in other parks during his post-1916 tenure as NPS Director. One legal historian has written "enjoyment reasonably required access and at the time roads, trails, hotels, campgrounds and administrative facilities did not seem unduly invasive. The act cannot have meant that 'unimpaired' was to be taken in its strictest sense, particularly since the act included specific approval for certain inevitably compromising actions: leasing for tourist accommodation was the most obvious example."²

In contrast, imagine today trying to build a fraction of Yellowstone's road system or even one of its historic hotels or lodges. It is an absolute certainty that "impairment", especially the very low impact threshold in the Clinton-era policies, would be THE basis for objections. Obviously the 233 miles of pavement associated with the famous "Loop" road system and six major visitor services centers (Mammoth, Roosevelt, Canyon, Lake, Grant Village, and Old Faithful) have an "impact" on Yellowstone's resources. Undoubtedly, the roads, parking lots, boardwalks to thermal features, bridges, cabins, hotels, restaurants, visitor centers, support facilities, employee housing, ranger stations, and headquarters offices have some adverse impact on the natural environment and compromise in some fashion the "integrity" of the same environment. Yet it was decided years ago, fully consistent with the 1916 Act, that such impacts were acceptable to facilitate public use and enjoyment of our first National Park. I would submit that the vast majority of American citizens would still agree that the effects and consequences of these developments do not constitute an illegal impairment of Yellowstone's wonderful resources.

The 1916 Act clearly contemplates a professional balancing exercise to achieve both parts of its mandate and NPS Management Policies must reflect the same. To that end, the term "impairment" must be defined reasonably and consistently so it does not become a weapon to be used against traditional use and enjoyment. Most Americans find satisfactory the present on-the-ground state of affairs in our Parks regarding visitation and use and would be aghast if they realized that the 2001 NPS management policies effectively define many of these uses as illegal. I would suggest that an appropriate definition of impairment would recognize that some adverse effects are acceptable to facilitate use and enjoyment so long as those effects do not materially or significantly alter ecological processes or have appreciable adverse impacts on scenery, wildlife, and other natural resources. This would be consistent with the "material" impact standard used to define permissible activities on units of the National Wildlife Refuge System (that standard was first adopted by the U.S. Fish and Wildlife Service in the mid-1980's and affirmed by Congress in 1997).

Fortunately, the definition of "impairment" in the proposed Policies (see § 1.4.5) is consistent with the 1916 Act, its obvious intent, and practical experience derived from a century of park operations. The proposed definition ensures that use and enjoyment will be managed to assure that what we see and enjoy today in our Park System can be seen and enjoyed by our children and grandchildren.

²R. Winks, "The National Park Service Act of 1916: A Contrary Mandat"; 74 Den. U. L. Rev. 575, 1997.

RESOURCES AND VALUES

The 1916 Act references the conservation of tangible resources: scenery, natural and historic objects, and wild life. In 1978, Congress added that NPS management “shall not be exercised in derogation of the values and purposes” for which Park System units were created. 16 U.S.C. § 1a-1. The same provision makes references to the “high public value” of the System. *Id.* Since then it has become common for some to refer to “resources and values” as if the two are synonymous. See NPS Management Policies 2001; 1.4.6. Advocates have similarly seized on this language to press for more social management by NPS. For example, one commentator writing about “loving them to death” (i.e., Parks) argued that “NPS must refuse the whims and desires of popular demand and instead exert a strong hand . . . to create an [visitor] EXPERIENCE worthy of this [1916] mandate.” (Emphasis added.)³ This and other references to “experiences” are illustrative of an efforts to insist on more and more social management in the name of resource preservation.

A greater measure of intellectual rigor is needed to ensure that policy decisions regarding public use and enjoyment distinguish properly between tangible resources and more subjective, intangible values including the subjective personal “experiences” of different park users. For example, clean water is a tangible resource. A healthy elk herd is a tangible asset as is a stand of red mangrove trees. In contrast, subjective aesthetic appreciation falls into the category of values. A mountain climber on Denali gets dropped off by ski plane and relishes the silence when the plane departs; he later is disturbed and upset when another plane carrying flightseers passes by prompting him to write NPS demanding restoration of “natural quiet”. In my experience, many of the most contentious Park System management battles involve “values”—disputes among and between user groups over the most appropriate way to enjoy our parks.

Unfortunately, there is a trend toward treating the personal aesthetic values of some users as a resource. By the alchemy of politics, those values get transmuted into “resources” and become the basis for management actions detrimental to other traditional user groups. It is fully appropriate, and necessary, to conserve genuine resources to fulfill the mandate of the Organic Act. That Act should not, however, be misconstrued and be the basis for giving one user group preferred status and prohibiting the activity of another because the former raises aesthetic objections. A public institution such as NPS has an obligation to all of our citizens and should strive to accommodate a variety of park uses and users as long as they do not impair bona fide resources. The authors of the Policy rewrite should be applauded for making clearer distinctions between uses (and users) and resources and values. Both the Natural Resource Management sections (Chapter 4) and the “unacceptable impact” provisions distinguish between resources and values and “appropriate uses.” (See 8.1.1; 8.1.2). The improved intellectual clarity that arises from the new language is overdue.

MANAGEMENT OF USES

The proposed NPS Management Policies also do an excellent job in curbing the tendency for managers to opt first for “lock the gate” decisions. A disturbing trend in recent years has been the inclination of park managers to almost immediately select closures or prohibitions in dealing with use management issues. Instead of seeking to manage uses to conserve resources or to accommodate different users, it has been too easy to simply post a “closed” sign. The proposed rewrite takes a far more professional, and refreshing, approach. It prescribes intermediate steps to manage, mitigate or avoid resource impacts or user conflicts. Only when management cannot correct a problem are closures or prohibitions prescribed. (See 8.1.2). This is such elemental common sense that it is sure to become controversial.

Thank you again for the opportunity to appear today and present this overview of NPS Management Policies and the 1916 National Park Service Organic Act.

Senator THOMAS. Thank you, sir. I appreciate it.
Mr. Castleberry.

³D. Herman, 11 Stan. Env'tl. L. J. 3 (1992).

STATEMENT OF DON H. CASTLEBERRY, MEMBER, EXECUTIVE COUNCIL, COALITION OF NATIONAL PARK SERVICE RETIREES, FORMER DIRECTOR, MIDWEST REGIONAL, NATIONAL PARK SERVICE

Mr. CASTLEBERRY. Thank you, sir. I appreciate your holding these hearings, Senator, and allowing me to appear before you.

My name is Don Castleberry. I live in Arkansas. I had the privilege of a 32-year career with the National Park Service. I was a park ranger, a park manager of five different parks, deputy director of the Mid-Atlantic Region, director of the Midwest Region, and I also acted as associate director for operations in my last year of employment.

Since retirement, I have served on a number of boards, including NPCA, and am now on the executive council of the Coalition of National Park Service Retirees. This organization is made up of 430-plus now former employees of the National Park Service. These are all people who committed their working lives to the things we are talking about here today, the national treasures. We came from a broad spectrum of political orientations and affiliations. We would all be happier home fishing and writing our books and tending our gardens and playing with our grandchildren, but we do care about these resources and we are making the effort to let these concerns be known. We are convinced that this is a critical time in the life of our national treasures and we could not stand by and allow them to be compromised by narrow, short-term private interests.

The development of these new policies, as you have heard, took place under the guidance of Mr. Hoffman, who was mentioned. One of the advantages of speaking last is you get to hear what the others said. I was around during some of those times too, like Mr. Horn and Mr. Galvin, and I would say, from what I have heard, there was a considerable difference between the involvement of Mr. Hoffman and the involvement of the political appointees in past efforts. This seemed as though it was a sort of secret thing that took place in a smoke-filled room somewhere with the Park Service employees being selected and pledged to secrecy and threatened almost.

We have heard about the August draft and how it was disavowed really by the Department as being not what they wanted to put their name to. When it reemerged in its new form, it had been revised and I would say softened. Some of the wording had changed. But we have looked at it very carefully, and we have studied side by side the original version, the Hoffman version, and the current version. And our assessment is that the current draft is simply the Hoffman draft uncomfortably dressed in a rumpled, ill-fitting ranger uniform.

This is the first time such policies have been started that the superintendents out in the field, the very people who are going to be using these policies, were not brought in and made a part of the effort. One would wonder why they are only going to get to comment on it after it is a document that is out for public comment instead of being a party to it from the beginning.

All these National Park Service people that are here, virtually all of them, are friends of mine, people I have worked with, people I respect highly. This is not their product. I doubt if any of them

would stand behind them if they were allowed to speak out without fear of retaliation.

Mr. Akaka mentioned the new personnel policies that we have learned of, and they frighten us too because we can see the sort of pushing down of a litmus test loyalty to this administration's political slogans being taken down right to the grade 13 and mid-level managers, limiting their frank input from knowledgeable people who are going to actually be living with these policies and increasing the intimidation factor.

Our assessment, the assessment of all 430 of us who have lived with these things before and helped to write them in the past, is that in not one single instance does the proposed change increase the likelihood of park resources being preserved unimpaired. Former Director Roger Kennedy described this strategy as the August draft being a threat to take off a leg, the October draft as being an offer to take off a foot and hoping that we will be relieved at the somewhat diminished harm.

Mr. Chairman, the harm has only been diminished or masked, not eliminated. The members of our commission, whose jobs are not at risk, know these issues, and we can say what the current employees cannot say. There is no need for any amputation at all and no amputation is acceptable. We challenge the Department to explain why these revisions are needed, who initiated them, whether they are better or worse than the current policies. We have been there. We know the answers. They are not needed, and they are not only worse, but if they are adopted, they will place the integrity of our national park system in jeopardy.

Thank you for hearing my testimony, sir.

[The prepared statement of Mr. Castleberry follows:]

STATEMENT OF DON H. CASTLEBERRY, MEMBER, EXECUTIVE COUNCIL, COALITION OF NATIONAL PARK SERVICE RETIREES, FORMER DIRECTOR, MIDWEST REGION, NATIONAL PARK SERVICE

Mr. Chairman and members of the Subcommittee, my name is Don Castleberry. Thank you for holding this hearing on a subject so vital to our nation, and thank you for allowing me to express these views. I had the privilege of a 32-year career in the National Park Service, during which I held such positions as Park Ranger, Park Manager (of five different parks), Deputy Director, Mid-Atlantic Region, Director, Midwest Region and (acting) Associate Director-Operations, in Washington. I served six years as member, Board of Trustees, National Parks Conservation Association and am now a member of the Executive Council, Coalition of National Park Service Retirees.

The Coalition of National Park Service Retirees is over 430 individuals, all former employees of the National Park Service, with more joining us almost daily. Together we bring to this hearing more than 12,000 years of experience. Many of us were senior leaders and many received awards for stewardship of our country's natural and cultural resources. As rangers, executives, park managers, biologists, historians, interpreters, planners and specialists in other disciplines, we devoted our professional lives to maintaining and protecting the National Parks for the benefit of all Americans—those now living and those yet to be born. In our personal lives we come from a broad spectrum of political affiliations and we count among our members, five former Directors or Deputy Directors of the National Park Service, twenty-three former Regional Directors, or Deputy Regional Directors, twenty-seven former Associate or Assistant Directors and one hundred and eight former Park Superintendents or Assistant Superintendents.

The proposed changes to National Park Management Policies provide one of the clearest examples of why this coalition, which never seemed necessary until two and a half years ago, has come together. Believe me, there are few among us who would not prefer to be writing our books, tending our roses, enjoying grandchildren, or volunteering at a National Park. We have coalesced because this is a critical time for

the treasures to which we devoted our careers. It is a time when this nation may decide whether to retain the benefits of victories painfully won over 130 years of National Park history or to risk losing them to narrow, short-term, and private interests.

The parks are often called national treasures—the crown jewels of our republic—but they are far more than that. They are repositories of information against which human progress—or its opposite—can be gauged. They are touchstones of who we are as a people and even as members of the human race. They are the best hope for preserving the cultural record that defines American civilization and the biological diversity upon which life itself depends. For evidence that the people of the United States know this, simply recall the times a few years back when the Federal government was shut down due to budget disputes. Network news explained the meaning of that crisis to ordinary citizens by answering just four fundamental questions:

- will the nation be defended
- will the Social Security checks be issued
- will the mail be delivered, and
- will the National Parks be open?

Congress, in its Act of August 25, 1916 created the National Park Service and charged it with a duty to provide for enjoyment of the parks “in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” If that left doubt of Congressional intent; the Redwoods Act Amendments of 1978 clarified that when use conflicts with preservation for future generations, preservation must prevail. Since 1916 nine Republican and seven Democratic administrations have followed these directions in reasonably consistent and evenhanded ways. Management Policies of the National Park Service, through which law is applied in detailed and specific ways to what actually happens in the parks, have been revised occasionally, although not frequently, the last two times in 1988 and 2001.

The draft of proposed Management Policies of the National Park Service that was released for comment on October 19, like its earlier version—Deputy Assistant Secretary Paul Hoffman’s rewrite that became public information in August—is a drastic and dangerous departure from a longstanding national consensus. It is driven neither by law, by any conservation need, or by any failure of practical application. Little has changed since the present Policies became effective only four years ago.

The Department of Interior has suggested that the present policies need improvement, but section 5.3.5.1 provides abundant evidence that improvement is not the goal of these proposed revisions. That section, dealing with access to and use of cultural resources, in both the present policies and the proposed revision, contains the statement: “These regulations are currently under review, and NPS policy is evolving in this area.” If improvement of policy were really the goal, this nearly four-year-old statement surely would by now have been supplanted by some actual new policy.

If improvement cannot be demonstrated as the goal, one must conclude that the motivation stems from the personal agendas of a few nearly anonymous appointees in the Department of Interior who know that they could not achieve the same goals by asking the Congress to change the laws.

This is the first time since Assistant Director Tolson started writing administrative policies back in the 1940’s that superintendents and their staffs have not been included in any proposed re-writes of such policy documents. Under the new process the vast majority of superintendents and staff members only input into the proposed revisions would be to comment, as members of the general public, after the policies have been developed.

During this past summer, Deputy Assistant Secretary Paul Hoffman labored quietly to create a draft of Management Policy revisions, carefully limiting knowledge of his work to a small number of others and forbidding them to share it broadly.

Since the need for a revised policy did not originate from NPS career employees, nor from the visiting public, a reasonable question emerges, as to its origin. When asked, the political employee, Mr. Hoffman declined to identify anyone who had urged the changes.

After Hoffman’s disastrous proposals were exposed in August, public reaction was so powerful that the Department of the Interior quickly disavowed them, calling the draft “devil’s advocacy,” and “intended to promote discussion.”

Aside from noting that the national parks are more in need of the advocacy of an angel than of a devil, one can only wonder how much real discussion might be generated by a draft passed hand to hand among a gagged and silent few.

In a chilling parallel action, new personnel policies, instituted by the NPS director, subject career employees to a “litmus test” of loyalty to this administration’s political objectives, as a condition for promotion, further limiting candid input from knowledgeable professionals.

One also might ask “what is the rush?” Why a 90 day process when in the past, such efforts could take years, and involve a wide range of NPS employees, in an open, participatory process. With rushing can come mistakes. In matters of such overriding importance, should not the guiding principle be “first do no harm?”

The next step of an appointee who had been embarrassed by exposure but who remained determined to have his way was entirely predictable, he would assemble a group of National Park Service professionals, dictate the goals of changes to be made, direct them to find language that the public would accept but that would still achieve the goals, and require them to come back and negotiate even the palliative language with him. That, Mr. Chairman, is what we are reviewing today. Although the October draft is being attributed to 100 National Park Service employees, it is in fact the Hoffman draft, forcibly and uncomfortably dressed in a rumpled and ill-fitting Ranger uniform.

Although entire sections, such as the ones dealing with wilderness and grazing, still look much like the Hoffman draft, for the most part the October draft simply uses softer language to make the same changes.

Examples follow:

1. The Hoffman policies deleted from section 1.4.3 include two critically important policy directives from congress that are included in the existing 2001 policies:

Present Park Service policies deleted by Hoffman: “Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant.”

(This mandate)—“is independent of the separate prohibition on impairment, and so applies all the time, with respect to all park resources and values, even when there is no risk that any parks resources and values may be impaired.”

From the 1916 Organic Act of Congress creating the National Park Service: “The—National Park Service—shall promote and regulate the use—of national parks—as provided by law, by such means and measures as conform to the fundamental purpose to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment for the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

A 1978 act of congress further emphasized preservation in the Redwoods Amendment “Congress further reaffirms, declares and directs the promotion and regulation of various areas of the National Park System—shall be consistent with and founded in the purpose established by the first section of the Act of August 25, 1916, to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these area shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by congress.”

The effect of the Hoffman deletion of these two paragraphs deletes the clear mandate of congress in the management of national parks that the primary purpose of managing parks is preservation of the resources.

2. A specific application of the Hoffman changes that weaken the Park Service mandate to preserve resources includes this change to planning for cultural resources.

Present Park Service management policies direct park planners to “always seek to avoid harm to cultural resources.” The Hoffman rewrite directs park planners to “always seek to avoid ‘unacceptable’ harm to cultural resources.”

The effect of this Hoffman rewrite is to direct that there is acceptable harm to cultural resources, in direct conflict with current policies that direct planners to always seek to avoid harm.

3. A Hoffman deletion allows visitor activities to degrade the experience of other visitors to the park.

Present Park Service management policy deleted by Hoffman: “the Service will not allow visitors to conduct activities that unreasonably interfere with—the atmos-

phere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic or commemorative locations within the park.”

The effect of the Hoffman deletion allows uses by some visitors to unreasonably interfere with the experience of the park by other visitors.

4. The Hoffman rewrite weakens the protection of natural soundscapes in a park:

Present Park Service management policy deleted by Hoffman: “The National Park Service will preserve to the greatest extent possible, the natural soundscapes of parks.”

The Hoffman rewrite adds: “The National Park Service will restore degraded soundscapes wherever practicable and will protect natural soundscapes from degradation due to unacceptable noise.”

The effect of the Hoffman deletion and change requires the park to determine what is unacceptable noise, and practicable restoration, rather than a simple directive to preserve the natural landscape.

5. The Hoffman rewrite deleted a clear direction on use of equipment, vehicles and transportation systems.

Present Park Service policies deleted by the Hoffman rewrite: “Use of motorized equipment: where such use is necessary and appropriate, the least impacting equipment, vehicles, and transportation systems should be used.”

The effect of this Hoffman deletion removes the direction to use the least impacting equipment in a park including all vehicles and transportation systems.

6. Strong words that require “preservation” of resources have either been adjoined to or supplanted by weaker words like “conservation,” or diluted by adding “as appropriate.”

7. Previously clear sentences have been replaced by vague language that will be more subject to error or challenge in court.

8. Present Management Policies provide examples that help a park manager identify “traditionally associated peoples” such as tribal groups. The proposed draft replaces the examples with fuzzy guidance that might place a gateway city’s chamber of commerce on an equal footing with native peoples who have occupied a park’s lands since time immemorial.

9. New requirements to “cooperate” with outside groups, in lieu of present requirement to “collaborate,” threaten a park manager’s ability to protect park resources on behalf of all the people of the United States when a small number of park neighbors have different ideas.

In not one single instance does a proposed change increase the likelihood of park natural or cultural resources being preserved unimpaired, but they do significantly decrease THAT likelihood.

Former Director Roger Kennedy has accurately identified the Hoffman strategy. The August draft threatened to take off a leg. The October draft says “no, no, we will only take off a foot,” and hopes we will be relieved and grateful at the somewhat diminished harm. It was the bitter duty of the career National Park Service employees to whom the Department of Interior is now attributing this draft to diminish the severity of the amputation. They did the best they could, but harm has only been diminished or masked, not eliminated. Fortunately, there are over 430 National Park Service retirees whose jobs are not at risk, and we can say what the career employees cannot—that there is NO need for any amputation at all, and any amputation is unacceptable.

Mr. Chairman, the Coalition of National Park Service Retirees challenges the Department of the Interior to explain why this revision is needed. The public certainly did not ask for it—95percent of American park visitors rate their visits good to excellent. Perhaps the Department, instead of telling us that 100 National Park Service employees worked on the draft could tell us what percentage of National Park Service career professionals believes the October proposal is actually needed—specifically whether it is better or worse than the policies now in effect. We have been there and we know the answers—they are not needed and they are not only worse than the present policies but if adopted they will place the heritage of all Americans in extreme jeopardy.

Thank you for allowing this testimony, thank you for your continued vigilance on behalf of the national parks, and thank you for the actions you will take to assure that they can continue to be enjoyed by this and all future generations in unimpaired condition.

I will be happy to answer any questions.

Senator THOMAS. All right, sir. Thank you very much. We appreciate all of your testimony.

Now we will go to questions and responses. I hope we can, on both sides, cut through and get right to the issues so we can have fairly concise questions and fairly concise answers so we can come away from here with some ideas.

Just again to sort of summarize, Director Martin, what would you say are the reasons for updating the policy?

Mr. MARTIN. I think that the first thing I want to say is that the current policies that we are operating under are good. I think, though, that we felt that—and again, setting aside the draft that Paul Hoffman did—there were a number of things under the policies that perhaps from the perspective of Washington I think could have further clarity to the field, and that is how you describe impacts to a community, how you describe them to users, and how you encourage them to join you in preventing impacts.

As an example—and Mr. Galvin mentioned it, but the existing policies, and the ones that were in prior to that I think were good, and they have all been committed to conserving resources. But in 2001, a cell tower did go in at Old Faithful, and that cell tower probably did not impair Yellowstone National Park, but we would have termed that an unacceptable impact in the current draft. And we had to go back in and take that tower down, lower it, and make it so it just did not impair the resources, but prevented unacceptable impacts. And that is just one example of how we can always strive for doing a better job, and I think that is what we are trying to do, and to communicate it to the field, to the people who have to implement those policies not just for here in Washington.

Senator THOMAS. Thank you.

Just very briefly, would you agree that this is the Hoffman proposal in a different uniform?

Mr. MARTIN. No. And I also must say that I think debate is good. There were a number of superintendents that helped with this. And it is now out for very, very, very extensive review. But I do not believe that that is the case, and I think that we are striving to do a good job in these circumstances as we look into the 21st century.

Senator THOMAS. Thank you.

Mr. Galvin, you indicated that when there is a different position, it is very clear how it ought to be taken. Of course, as you know, there are different views and you have to balance. Do you not have to have some balance between conflicts, in this case between preservation and use? Are there not decisions that have to be balanced?

Mr. GALVIN. Yes. I have no problem with the concept of balance. My testimony says it really is not a fundamental purpose of national parks, which is where it is placed in the current draft of the policies. We have got something around here that goes back to 1918. My statement I believe is historically accurate. That word “balance” never appears when you are talking about the fundamental purpose. Certainly you have to balance use and impacts as a manager of a park. There is no question about that.

But the historical interpretation of the Organic Act is not, as my good friend, colleague, and former boss, Bill Horn, outlines it today. He quotes Robin Wenks in his prepared statement. Robin Wenks

researched the history of that act more than anybody I know, and his conclusion was that the conservation purpose was predominant, and this draft eliminates that statement.

Senator THOMAS. Thank you.

Mr. Horn, you questioned the need for any sort of a change. Was there a need for a change when you were involved, and if so, why did you do it?

Mr. HORN. Well, I think the perceived need in the mid-1980's was that our review of the policies that had been put together in the 1970's did not faithfully and accurately reflect the direction provided by Congress in the 1916 Organic Act and that the policies could do a better job. I would submit that my review of the 2001 policies is that they are deficient and they do not track the 1916 Organic Act as faithfully as they ought to.

I can give you one other example, just sitting here, talking about how you manage a variety of uses and how do you deal with the questions of impairment and uses and resource conservation. Section 8.2 of the 2001 policies says that when you have got some problems dealing with uses, basically the first step is you temporarily or permanently close the area. The second step is you prohibit the particular use, and the third step is you otherwise place limitations on the use to ensure that impairment does not occur.

It strikes me that that is totally backward, because visitor use and enjoyment is an inextricable part of the basic statutory mandate, that the proper order would be step one, you establish limitations on use to ensure that impairment does not occur, and if sound management cannot eliminate the impairment, then you go to closure, then you go to prohibition. That is the exact order that is now reflected in the rewrite. It is dead opposite in 2001, and I just do not see that as being fully consistent with Congress' nearly century-old admonition.

Senator THOMAS. Thank you very much, sir.

Senator AKAKA.

Senator AKAKA. Thank you, Mr. Chairman.

Mr. Martin, I have three questions concerning the recent revision to the hiring process for GS-13 grades and above, including park superintendents and deputy superintendents. The October 11 memo from the Director establishes a process that is deeply disturbing to me as a senior member of the Subcommittee on Oversight of Government Management, as well as the Federal Workforce and the District of Columbia, which has jurisdiction over Government employees' issues.

My first question is whether other bureaus in the Department of the Interior have similar policies reaching into the career managerial levels of the Civil Service to determine their adherence to the President's management agenda, such as the Fish and Wildlife Service, the Bureau of Reclamation. And also, what about other Federal agencies?

Mr. MARTIN. I can speak only to our bureau just because that is what I am familiar with. They have not let me dig into Fish and Wildlife Service and some of the other bureaus, so I am not familiar with those, but I am sure we could provide that information.

I think the Director's interests were—and we as career people spend a lot of time and have throughout my career in working with

the administration, to implement things, again, like the President's management agenda, which is for better business practices, which is a big factor in what we do now. I would say that it is consistent with policies that have been in place in one way, shape, or form for a long time. I talked to George Hartzog on that a week or so ago, and he said he used to approve everybody to the GS-9 level in Washington.

I have a memo here from Don Berry saying GS-15's, career people, should be cleared with him. I think you can find that that has been an interest because these positions are so important.

I will tell you I think it was not Fran's intention to do anything but be aware of what is going on within the work force, to make sure managers were aware of her goals, of our goals, and of the President's goals. We have heard about a litmus test, and that is absolutely not true. The Regional Directors propose and make the selections, but it is totally appropriate for the Director to know who those folks are.

When I was hired in 1994 to be a GS-14 superintendent at Denali, I had to wait a couple of months while my name was circulated in Washington to make sure that I was okay. I guess I am one of those that somehow got through, so they do not catch everything. But I do not see that as different than the current policies in place.

Senator AKAKA. But, Mr. Martin, I am troubled by what could be seen as a move to politicize Civil Service promotions. Would you please explain how promotion reviews for about 1,000 positions, which are to be reviewed solely by the Director, will be carried out in a manner consistent with the Government's merit principles and free from political interference?

Mr. MARTIN. We adhere to those. Regional Directors make the selections and then they let the Director know what is going on. If we have broader issues—and I think this was the case under Bob Stanton as well in trying to diversify the work force—we move people from position to position as they have personal needs or the agency has needs. But it is not about, I think, any unreasonable political involvement. But again, GS-15's, which are the subject of the current policy that Fran just sent out, have gone down to the Assistant Secretary's office for review for as long as I can recall. So that is not something that has changed.

Senator AKAKA. I have been very concerned, as I continue to mention, about what is happening on these levels. What evidence would you require to assess how an individual is able to lead employees in achieving the Secretary's four C's and the President's management agenda?

Mr. MARTIN. Having been a superintendent for a long time—I have just recently stepped into the central office—I would say that more now than ever before it is important that we learn how to engage others in conservation. I think if we are going to be successful for the long term, it is going to be not by giving anything away, not by impairing resources, but by working with others to better communicate; to strengthen how, for the long haul, we make these parks sustainable and we continue to protect them in an ever-growing complexity of times. And I think that that is the commitment

that we have in our hiring; we are looking for managers who can do it all.

Business practices is an example. There were times when the Park Service virtually ignored those. When I went to Tetons as superintendent, there was no one responsible for management of the business that had been trained in that particular field. Look at the Denver service center. We just did not think about business in the same way that we must now, you know, building outhouses that were extremely expensive. They were really nice, though.

But now we have to own up to the citizenry and say how we are spending their money, and I think that it is important that we realize how those changes are taking place, that we step up. That is what we are looking for managers to do, the whole package, and it is a huge job we ask of them. And that is all that we are about.

Senator THOMAS. Thank you very much.

Senator ALEXANDER.

Senator ALEXANDER. Thank you, Mr. Chairman. I want to thank you for holding this hearing. I think it is very important and I appreciate the chance to ask the questions. I think the testimony has been terrific.

Mr. Horn, I think you were very straightforward because I think basically what I heard you say was that there was an election after 2000 and the 2001 documents were a holdover from the last administration and needed to be changed and these are some changes that are better.

There has been some talk of politics, and I want to spend just 60 seconds on that. I come from one of the most Republican areas in the country. We have never elected a Democrat to Congress since Lincoln was President, and our primary interest in the area, as conservative Republicans, is the Great Smoky Mountains. And we do not want more big towers with red flashing lights in them. We do not want more low-flying airplanes, and we want cleaner air.

That is why I was deeply concerned by this first draft that came out. It may be that this redraft that is coming in corrects all that. But it is a big burden to carry now. It would be like sending out a warm-up singer to the Grand Ole Opry that was so off key that it ruined the rest of the night. So I am very skeptical even about this redraft.

I see, for example, in the documents that I am going through, stricken out words that say that where there is a conflict between conserving resources and values and providing for enjoyment, conservation is to be predominant. Those who have read it say that it demotes clear skies to an associated characteristic, deletes scenic views as a highly valued natural resource, removes the overarching guiding principle that has to do with sound. I think noise pollution and visual pollution and clean air over next 25 years is going to be massively important in our parks, as they become more sanctuaries in an age which is more and more technological.

Mr. Martin, let me ask you. Let us just take one park. I know there are 288. They are all different. They should be managed differently. Let us take the one I know the most about. We have 10 million people who come to the Great Smoky Mountains every year. A lot of them are from east Tennessee and North Carolina. How

will this redraft make the air cleaner? How will it make it less likely we will have noise? How will it make it less likely that we will have big, tall towers with red flashing lights called cell towers that we can see?

Mr. MARTIN. Well, we certainly share all of those concerns with you. I would like to go back to the first statement that had been taken out of section 1.4.3. There is a lot added back in, several key sentences, that talk about the very things that you have concerns about. Again, it is a draft, and if somehow that remains unclear, as we move through the public process, we will certainly correct that concern.

Two, in the air quality section—we actually put in, before chapter 1, some key definitions that are absolutely important. One is to understand what an unacceptable impact is and what appropriate use means. And if you use that test of unacceptable impact, we would not allow any increasing impacts. And I think we share a concern in this document about increasing impacts—and we share the concerns that you just mentioned, and that is why this document talks about passing parks on better to future generations in a better condition. That is our goal.

In the specific air quality section—I have seen some of the information that has been circulated, but what this draft says—and again, I recognize and I accept the scrutiny and skepticism based on some of the concerns about a draft that was never meant to have public review that got out. It did.

Senator ALEXANDER. In a way that almost makes it worse.

Mr. MARTIN. It makes our job certainly difficult.

But the National Park Service has the responsibility to protect air quality under both the 1916 Act and the Clean Air Act, and the Service will assume an aggressive role in promoting and pursuing measures to protect park resources from the adverse impacts of air pollution. In the case of doubt as to the impacts of existing or potential air pollution on park resources, the Service will err on the side of protecting air quality and related values, which are those values of clear skies. They are the values of the experience the visitor gets, and they are the values in this document of the viewshed that you see when you stand in those mountains and look out. And we encourage people to work cooperatively with others on it.

So we share your concerns and understand your skepticism.

Senator ALEXANDER. Mr. Chairman, I would like to ask to include in the record a letter from six Republican Senators to the Secretary of the Interior, October 27, expressing our appreciation for the redraft and our concern about some aspects of it.

Senator THOMAS. It will be included.

[The letter follows:]

U.S. SENATE,
Washington, DC, October 27, 2005.

Hon. GALE NORTON,
Secretary of the Interior, 1849 C Street, N.W., Washington, DC.

DEAR MADAM SECRETARY: We are writing to express our concerns about ongoing efforts in the Department of the Interior to modify the management policies of the National Park Service.

We had deep reservations with the preliminary draft that initiated this process, particularly suggestions to de-emphasize the Park Service's preeminent park protection role and weaken the Park Service's role in protecting against reductions in air

quality. We were also extremely concerned about changes to the definition of “impairment.”

We are encouraged that the new draft, which was published for public comment on October 19th, includes many improvements from the prior draft. Our preliminary review, however, has turned up some substantive changes of concern and we urge you to give these special attention.

First, we are concerned that despite improvements, the primary mandate of the National Park Service to err on the side of preservation appears to be deemphasized in the draft. At best, this change appears to blur, not clarify, the Park Service’s primary responsibility to keep the parks protected for the future. We also are concerned that some changes with the potential for weakening the Park Service’s role in protecting park air quality and increasing the potential for inappropriate motorized use in the national parks appear to be retained. We look forward to discussing our concerns with you during the comment period and are pleased that Chairman Thomas will be holding a hearing on this matter in the National Parks Subcommittee.

The national parks are cherished by the American people and revered around the world. They are America’s cathedrals—living repositories of our history and culture, and places for personal and spiritual reflection. Current management policies, which were last modified only four years ago, provide enormously important guidance to national park managers. Throughout their visits and comments, the American people have let it be known, year after year and by overwhelming margins, that vigorous protection of park resources has enhanced, not encumbered, their enjoyment.

We acknowledge and thank you for the positive changes made in relation to the preliminary draft. We still question, however, the need for requiring the Park Service to change its policies so quickly after publication of the last revision in 2001. The Department’s first principle in rewriting Park Service policies should be to do no harm. The test should not be whether these changes improve on the preliminary draft, but whether they protect our national legacy better than the 2001 edition.

The quick process that is unfolding at this time appears inconsistent with that principle and with the need for careful deliberation about possible policy changes. A matter of this importance deserves substantial public dialogue, not merely a brief opportunity for written comments. Over the past 25 years, the Park Service Management Policies have been revised twice—in 1988 during the Reagan Administration, and in 2001 during the Clinton Administration. Both versions underwent much more extensive professional review than the current draft, both were made available to the public for comment for long periods of time, and both were virtually identical in their interpretation of the meaning of the key language of the National Park Service Organic Act.

We request that you move forward with this review in the most open, careful, and deliberate process possible, and allow for broad public input and vetting of these and any other changes. We believe the policies should be crystal clear that the national parks are to be enjoyed only “in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

Sincerely,

LAMAR ALEXANDER, MEL MARTINEZ, SUSAN M. COLLINS, JOHN WARNER,
OLYMPIA SNOWE, LINCOLN CHAFEE, *U.S. Senators.*

Senator THOMAS. Thank you, Senator.

Senator BINGAMAN.

Senator BINGAMAN. Thank you, Mr. Chairman.

Mr. Martin, in your testimony, you make it very clear that—you say—and I think this is an exact quote from your testimony—“when there is a conflict between use and conservation, the protection of the resource will be predominant.” Now, that language is also in the current manual, as I understand it. Why do we not just leave it there?

Mr. MARTIN. I think that maybe we should have done that from the amount of interest that single sentence has had. But we clarified it in several different ways. Again, this is looking at a field manager who is on the front line. What does that statement really mean? I think what we tried to do is clarify for them that it is not just about reconciling that particular instance, but it is about understanding those impacts. It is about preventing impairment. So

we have that language, and it is spread in 9 or 10 or 11 times throughout.

Again, recognizing now—and that is why we are having this public comment period—that that statement is important. That is why it is in my testimony, and I feel like that is something that we need to evaluate as we go through public comment.

Senator BINGAMAN. Well, I would hope you would. It strikes me that deleting that language is an odd way to clarify it. I would think the more obvious way to clarify it would be to state it again and underscore it or elaborate on it, if you thought that was necessary.

Let me also ask about another issue that you really did not address and none of the other witnesses did, but it concerns me particularly about this draft proposal that we have got or draft provision on fund raising and donations, Director's Order number 21 on donations and fund raising. This seems to me to go substantially further than the Park Service ever has in setting out and contemplating essentially corporate or other sponsorships of different features in the national parks, which concerns me. I have always thought of the national parks as sort of a commercial-free zone where I did not have people selling me Pepsis and things when I went in there. I mean, I have got nothing against Pepsi, or anything. I did not have people flacking some particular consumer product.

But this talks about donor recognition through benches, bricks, or paving materials, plaques, or other features may be allowed as part of a donor recognition program. The naming of rooms in a park facility is allowed as part of an approved donor recognition program. Corporate logos and name scripts on event facilities and signs and literature at all such special events, provided that the size and scale and scope and location of the corporate logos and name script does not dominate the event. And distribution of free products if they are related to the event. For example, you could have an Anheuser-Busch plastic bag if it related to a cleanup day, presumably, or some corporation, or anything that is consumable is okay, I mean, even if it is promoting a corporation.

It strikes me this is a slippery slope and a very major change, particularly since, as I understand this order, it contemplates for the first time permanent designation of some of these aspects. That has never been done before. There has always been some possibility of having an event at a national park but never sort of permanently designating. I do not know how far you could go with this, but the language seems to me to contemplate a lot of things that would be of concern to me.

Do you have a point of view on this? Are you prepared to testify on it today?

Mr. MARTIN. Sure. I can speak to it and we can certainly provide you any additional information as well.

It is something that is of great importance and great concern and where we definitely need significant clarification. In the 1990's, we began to get more and more into partnerships, and in fact, something that was done in the 1990's is a donor recognition, as you walk up to Old Faithful, that talks about donation of those boardwalks.

So I think that there was a need for clarity to the field and in the parks as we work with businesses. I will tell you, those of us like myself who were rangers and resource managers and suddenly are thrown into superintendency ranks and have to deal with partners, we needed that kind of clarification. We were all over the board on what we were allowing.

I think what this document does—and, again, it is out for public review, and if there is a lack of clarity, we have got to fix it. But it recognizes that this is going on. It went on at Mount Rushmore, Ellis Island, Yellowstone Park, all of those places. The Ranger Museum at Yellowstone, I think, had recognition of Conoco who helped donate to make that possible. And so it is to clarify that, and what this stresses is the importance of every single one of these having a plan in place before you go about it and do it.

Also, we have tried to professionalize our business ranks, and this is something that we have worked with Senator Thomas and others on through concessions and are now having spill-over into this to where we have more professional business staff that are working with these businesses. I think we are searching because we need those partnerships. I think we have right now 150 friends groups serving 160 parks that donate \$17 million annually, and we need guidance for that.

So we certainly need the criticism. We will review it. If we have gone too far, we will change it, but it is the goal to provide that balance out there.

Senator THOMAS. Thank you.

Senator Salazar.

Senator SALAZAR. Thank you very much, Mr. Chairman.

First, let me say, Mr. Martin, I respect you and I respect the Parks Director, Fran Mainella, and so I hope you do not take my comments as disrespectful to the jobs that the two of you have to carry out.

Second of all, my questions have to do with the appreciation I think that a Republican President, President Roosevelt, put out for his wish and his dream for a national park system. Obviously, we have lots of quotes from him. I am just going to use one and that is where he said in 1916—I quote—“Our duty to the whole, including the unborn generation, bids us to restrain an unprincipled present-day minority from wasting the heritage of these unborn generations.” And he continues on. But I think at the end of the day, what he was really talking about there was the concept of impairment of these national crown jewels that we have.

I have a couple of questions for you with that preface. First, when the early rules were released, there were a number of employees who came out and were critical of the early draft that had been released, I think by Mr. Hoffman. Are the employees who have been critical of the drafts that have been released, including perhaps this current draft, in jeopardy at all in terms of their employment for having been critical of the articulated proposed policies and rules of the Park Service?

Mr. MARTIN. The answer is no, and if they were, I guess my job might be in jeopardy too because I think I too was critical of that first draft, and yet I am allowed to be here today. I think that draft was never intended to represent the view of the Secretary or the

director or myself. It was really put forward as something to spark some debate, and it certainly did that. But when we started our revision, we started with how we make 2001 better, and we had that other draft set aside over here.

Senator SALAZAR. Let me just say, Mr. Martin, I think as this process goes forward, that the opportunity for the National Park Service's employees and their superintendents to be able to comment on this draft is something that I will do everything as one Senator to try to make sure that they have whatever protection is needed. I think the protection is already provided under the law.

Let me ask you the second question that I have with respect to this process, and that is that I think that part of the reason we are having this committee hearing today is, frankly, we do not understand what it was that was the true motivation of what you were trying to accomplish. I think all of us here can recognize that from time to time it is important to revise rules and to make them better. It is part of the life of an organism.

But it seems that there was something hidden, something done in the dark of night, something done in the back door closets to try to come up with a new set of rules to accomplish some purpose that we are trying to define here. For that very bad set of proposed rules to come out in August, for people in the Park Service to come out and say it is totally turning the direction the parks have taken for the last nearly 100 years in the wrong direction, and then for all of us that were here already in November, just a few months later, looking at a whole new set of revised policies, I guess my question to you is if you could sum it up in a sentence or two what is it that is the purpose behind the revisions of these rules?

Mr. MARTIN. I think it is to continue to improve how we manage the Service for the 21st century. Again, I would also add, in one more sentence, I think it is very complex and there are lots of different reasons. I would love to sit down with you and talk more about it because there are many different forces at play, and it is our job as the career civil servants to buffer those forces and to listen if there is legitimate criticism—

Senator SALAZAR. What were some of those forces that were most at play that led to the impetus, if you will, of the National Park Service to rewrite the rules? Give me the top two forces.

Senator MARTIN. Yes. There were interests by the members in the House committee that led the Director a couple of years ago to say that she would take a look at revising the policies. So that is certainly one.

I think that there was some lack of clarity in the field, and some of us felt that it is always good to take a look at how we do business and especially the business aspects of that. This 2001 draft really does not talk about how we do the business of stewardship, how we support our employees, how we train them, and so I think those were a couple of the key reasons. But I think that there are many, many others.

Senator SALAZAR. I see my time has run out. Mr. Chairman, will we have an opportunity to go through another round of questions?

Senator THOMAS. We will have another round, yes, sir.

Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate your calling this hearing.

Alaska is the beneficiary, if you will, of, I guess it is, in excess of two-thirds of the national parks that are in this country. So, of course, we take a very keen interest in what is going on with its policies and its management.

Mr. Martin, the Alaska National Interest Lands Conservation Act, ANILCA, does require that the National Park Service manage its lands in Alaska differently than it does in other places. Just a very brief summary from you, if you will, as to what those differences are and explain how the management policies will take account of these differences.

Mr. MARTIN. Well, we addressed that, and in fact, Marsha Blaszak, who is here with us, helped us on this revision that is on the table now. She pointed that out to us a lot, that Alaska was different, and having worked there, I understand some of that myself.

There are areas in Alaska that have been around since 1917, 1918, and some of those are managed very closely to the way parks in the lower 48 are managed. But then, as you know, we have the 1980 Lands Act that gave us many areas. How wilderness is managed up there is different, and access to inholdings, and subsistence. So there are many, many areas where there are these differences, some of them very pronounced and others I think are very subtle. I think we have worked very hard in Alaska and very hard on the national level to make sure that that understanding by our managers is key, and I think that we have been pretty successful in that over the last few years. And certainly that has evolved as well.

Senator MURKOWSKI. Let me ask you about the inholder situation. As you know, these are one of the stakeholder groups in Alaska that, wrong or right, for better or worse, create some controversy within the National Park Service. We hear from them on a regular basis. And there are many of my constituents who believe that it is the policy of the National Park Service to manage that relationship with pretty much a heavy hand. And there are some that believe that it is the policy of the National Park Service to essentially coerce these inholders into moving out, selling out to the National Park Service at a favorable price. And I guess I would ask you what the policy is as it relates to the inholders. Is this accurate?

Mr. MARTIN. We respect existing rights and it is our goal to treat people professionally. And there are cases where we do have interest in private lands, but there certainly should be no coercion or anything less. We respect that while they have it and we work—

Senator MURKOWSKI. Do you have any specific policies or anything written that indicates that respect of those individual rights?

Mr. MARTIN. We actually tried to write some of that into this document to talk about that, and it is not just inholder rights, but we have other things that have been, by legislation, by Congress, given to us where we have grazing in some parks or mining in some parks or those things that are all provided for by legislation. We talk about how we need to work with those folks so that they understand the importance of the parks. But we have to give full

respect to the rights that they have under the law, and I believe we are doing that. And I think we tried to clarify some of that in this document.

Senator MURKOWSKI. Let me ask you, Mr. Horn. You have been a long-term observer of the National Park Service and the role in Alaska. Do you think that the National Park Service is living up to the requirements of ANILCA in the management of the Alaska units?

Mr. HORN. I think in general the answer is yes. I think we disagree periodically on points here and there but I think the relationship with the agency and many of the traditional user groups has improved dramatically over the last couple years.

I would say in the context of this immediate management policy, another one of the deficiencies in the 2001 document was—I thought it was inadequate in its cross references to the variety of very, very important ANILCA-driven exceptions. From my review of the 2005 draft that is now out, the current document does a much better job of addressing the ANILCA-related issues Mr. Martin just referred to, compared to the 2001 document.

Senator MURKOWSKI. You say it is better.

Mr. HORN. Yes.

Senator MURKOWSKI. Is it good?

Mr. HORN. We will be working on some comments for some folks. I believe that they could do a better job in tightening up some of those cross references in a variety of areas. It is not optimal, but it is certainly superior to the 2001 document.

Senator MURKOWSKI. We will look forward to those coming.

Thank you, Mr. Chairman.

Senator THOMAS. Thank you.

We will have a second round. I am just going to ask you some short questions and hope you can give us a short answer to them.

Mr. MARTIN. I will try my best.

Senator THOMAS. Mr. Castleberry, you were concerned about the management direction given by the administration. Do you believe the administration from the highest levels should have an opportunity to set its direction, not talking about politics. I am talking about direction. Do you not think that is appropriate?

Mr. CASTLEBERRY. Indeed, I do. In fact, throughout the last half of my 32 years, I spent either working here in Washington or in senior regional position in which I interacted with Members of Congress and the administration in office, both parties, all the time. There was never any question about those roles. It does disturb us at times when there appears to be, as I believe Mr. Akaka mentioned, a sort of driving of the partisan politics deeply down into the—

Senator THOMAS. Well, most everybody agrees with that, and that is not really what is being done here. But there ought to be a policy, and frankly, I am disturbed sometimes that the higher level management in the park does not take more interest in the policy. Now, the details need to be left on the ground, but there are policies to the region and so on that need to be implemented, it seems to me.

Mr. Martin, what do you think is the most significant change that has taken place between the 2001 and what is being proposed?

Mr. MARTIN. I think it is hard to boil it down into a single thing, but in the shortness, I think it is clarity to the field professional, and I think it is beginning to talk about the concept of passing on parks improved to future generations because we have that task at hand as well.

Senator THOMAS. Thank you.

Mr. Galvin, you have talked, of course, about not needing this change. Would you have made any change? What would be the single most important change you might have made in the 2001 policy?

Mr. GALVIN. You mean if I were updating the 2001 policies?

Senator THOMAS. Would you have updated it or would you have just left it as it was?

Mr. GALVIN. Well, I would not feel an urgent need to update them, but there would be a couple of areas I would look at if I were given the task of updating them.

One is particularly the resource management sections. As scientific research comes in, we learn more about, for instance, the impact of unnatural noise, sounds in parks. We learn more about the impact of natural light on things like the Ridley turtles on the barrier islands.

I think I would look at how strong the cultural resource management sections are in promoting parks for educational purposes.

Those would be the areas I would look at I think.

Senator THOMAS. Thank you.

Mr. Horn, what would be your top recommendation to the Park Service to improve the current proposal?

Mr. HORN. As I indicated to Senator Murkowski, I think the cross references to ANILCA probably needs to be made a little bit more dramatic and with some greater detail. But I think overall maybe some additional clarity in terms of the whole exercise of how do you deal with uses and how do you manage them. I do commend the agency because I think that the hierarchy that they have built into the present document in terms of when you are dealing with uses, you try to manage them first. If you cannot manage them and you cannot deal with impacts, then you go to closures. I just think that that one fundamental change in the present proposal is sort of worth its weight in gold, and I commend them for it.

Senator THOMAS. Thank you.

Mr. Castleberry, times change. There are now more parks. There is more pressure to do other things, whether it be historic sites or whatever, to extend the responsibility of the park. More people are visiting. What would you think would be a change that might be necessary? What would be your high priority if you were asked to make any policy change?

Mr. CASTLEBERRY. Well, first let me say that I sympathize with any of you who tried to read all of these and understand them, as complicated as it was. I am familiar with all these and I still could not make sense out of a lot of the changes.

We, our coalition and myself speaking for myself, cannot see why we would have done anything different.

Senator THOMAS. You would have made no changes at all. Okay, thank you.

Senator Akaka.

Senator AKAKA. Thank you, Mr. Chairman.

Mr. Martin, talking about cultural resources, throughout the cultural resources section, the word “conserving” has been continuously inserted, along with “preserving” cultural resources. With respect to cultural resources, can you please explain the differences between the terms?

My concern stems from the fact that conservation with respect to harvestable resources means sustainable use, but you cannot do that with cultural resources. If we lower the standard and expectations for cultural resources, they will be lost forever. So my question is, with respect to cultural resources, can you explain the differences between the terms “conserving” and “preserving”?

Mr. MARTIN. Yes, and if I can—again, this is before the first chapter. So I guess we need to clarify this because even as we start to use this document, there is a section on the terms, “conserve,” “preserve,” and “protect.” This is on page 4 of this draft, right up front before the foundation document. Basically what it says is that it is clear from legislative history of these statutes, from case law, and direction from Congress that the choice of these phrases is interchangeable. And we make it clear that the choice of any one of these words within these policies is not intended to, should not be construed to imply a greater or lesser restriction on opportunities for visitors or the level of care of park resources and values.

And so because we have laws that say “conserve,” and we have laws that say “protect,” basically what we said is there is a lot of debate about this, so let us just say that Congress, the public, all of us expect us to take care of these resources with the highest value. Let us not get caught up in a single-word argument. Again, they are up front in this document that that high level of care, whether we say “conserve,” “preserve,” or “protect,” is the same, except in the document where the law says “protect.” We try to balance that as much as possible. But we meant one definition and we have that in here.

Senator AKAKA. There seems to be, Mr. Martin, a weakening of the commitment to avoid harm to cultural resources. As proposed, the Park Service will only seek to avoid unacceptable harm rather than all harm to natural resources. If this interpretation is correct, could damage, deterioration, or misinterpretation of cultural resources occur under the proposed guidelines?

Mr. MARTIN. I would say no. And I believe we are strengthening our commitment to that. It is something that I have a personal interest in. I have worked in parks that have had very significant natural and cultural resources. And I really feel the document does everything it possibly can to strengthen that language. Again, if inadvertently, in some of the things we have tried to do, that is the case, we will certainly take a look at it, but that was in no way, shape, or form the intent. So we will work with you and would be glad to sit down and discuss any concerns that you have in that regard because that is a very, very, very important part of what we do.

Senator AKAKA. Thank you very much, Mr. Chairman.

Senator THOMAS. Thank you, Senator.

Senator Alexander.

Senator ALEXANDER. Thank you.

Following up the chairman's suggestion of short questions, I have got two short ones.

Mr. MARTIN, do you think, given the amount of interest in this, it might be wise to extend the comment period from 90 to 120 days?

Mr. MARTIN. Again, I cannot make that commitment, but I certainly think that is something that we need to address. I believe that we do not want to——

Senator ALEXANDER. Well, let me just ask you. Short answers too, please.

Mr. MARTIN. Yes, I am sorry. I care a lot——

Senator ALEXANDER. So would you consider that with the Secretary?

Mr. MARTIN. Yes, absolutely.

Senator ALEXANDER. Thank you.

Second, I will ask one question for each of the four of you. Do you believe that this latest draft of the park management policies would make it easier or harder to introduce into the national parks uses that would add noise, add visual impacts or clean the air? Will it make it easier or harder to add noise, visual impacts, or to clean the air?

Mr. MARTIN. They are three very different things, but I would say that this will protect all of those, and I think it will make it easier for managers to make sure that we start to pass on parks in a better condition to future generations. So I guess I would say that it will provide the guidance when it is done. It is only a draft. It would actually make it better for that and also better for users.

Senator ALEXANDER. Well, that is not a good answer because if I am a park manager, am I more likely to put up a big cell tower, more likely to allow an overflight, and more likely to have cleaner air or less likely? Which are stricter?

Mr. MARTIN. I would say that this document would make it more likely that you would not put up that cell tower as was done at Old Faithful. I think it would make it more likely that you would have cleaner air because you would work cooperatively with people outside the park boundaries, and I would say that this strengthens our ability to work with the air tours and others to make sure that we diminish those effects on park resources.

Senator ALEXANDER. Mr. Galvin?

Mr. GALVIN. I sort of have different answers for different categories. I think, generally, this is a lowering of the standards.

I would like to talk about cell towers a little bit because it is very interesting to me. Not a word in this document on cell towers has been changed. The 2005 draft is exactly the same as the 2001 draft. Not a word of it has been changed. I was personally involved with the House in trying to get the 1996 Telecommunications Act changed to acknowledge wilderness areas, parks, et cetera. We were unsuccessful in getting that changed, so the Telecommunications Act simply says cell towers are okay on public lands, all public lands. And the policies reflect that direction of Congress. They say park superintendents will accept applications from FCC licensees for cell towers. It then says you have got to do NEPA, you have got to stick with the National Historic Preservation Act, you have got to protect park values.

But not one line of that policy has been changed here. So I cannot see how you are more protected from cell towers than you were in 2001. I think the act should have been changed, but we were unsuccessful in getting that changed.

Senator ALEXANDER. Is there time for Mr. Horn to answer?

Senator THOMAS. Yes, sir.

Mr. HORN. Mr. Chairman, I do not think it fundamentally changes or makes it easier for cell phone towers, noise, et cetera. I think the fundamental change is it provides for more rational management of visitor use. I think that is the better change in the change in the document.

Mr. CASTLEBERRY. It fuzzes up the picture and makes it more difficult to be sure when you are facing an individual question at the park level. The change does. It makes it easier for the undesirable things to happen.

Senator ALEXANDER. Thank you.

Senator THOMAS. You have got 45 seconds left.

Senator ALEXANDER. I will give them back.

Senator THOMAS. Senator Salazar.

Senator SALAZAR. Thank you very much.

Let me go back to this question of impairment of our national parks. Mr. Martin and Mr. Galvin, the question is to both of you. I have heard Mr. Martin testify that these proposed rules would help with excellence in the field in the management of our parks, that they were prompted, in part, because of a congressional interest in the House of Representatives. But at the end of the day, I think why there is so much concern about this issue here before all of us is whether or not this is really lessening the standards that we have had historically for national parks.

I go back to the existing policy that we have, subsection 1.4.3 of the management policy, which says that "Congress, recognizing that enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources is left unimpaired, has provided that when there is a conflict between conserving resources and values and providing for the enjoyment of them, conservation is predominant." Fran Mainella in testimony in front of this committee several years ago reaffirmed that same principle, and yet that language was deleted from this policy.

So I ask both of you to respond to me, in terms of what the impact will be from the deletion of this language on the nonimpairment provision that was previously in the policies. Mr. Galvin.

Mr. GALVIN. Well, they substitute the concept of balancing between resource protection and use, and I think that is a flawed concept. I do not think it has been in policy ever.

And I might say I am perfectly happy with the 1988 chapter on this. I think the 2005 chapter is a diminishment from that. The difference between the 2001 version and the 1988 version came about because there were two court cases in which judges told the Park Service even you cannot impair park values, one at Canyon Lands and one at Glacier.

Senator SALAZAR. So, Mr. Galvin, what you would say is that the concept of balancing is actually a retreat from the nonimpairment standard that is currently in the policy.

Mr. GALVIN. As stated in subsection 1.4.3 of the fundamental purpose of parks, yes, Senator.

Senator SALAZAR. Mr. Martin, how would you respond to Mr. Galvin on that point?

Mr. MARTIN. I would say that if you read the whole document and did not hinge it all on one statement, you would find that his concerns were completely met. I think we are also saying that this is a draft, and if inadvertently we have dropped a sentence that is that significant and important, we should add it in.

But we also would challenge people to read the document as you would if you were a manager charged with this incredible responsibility in the field answering to the public, answering to everyone. And I think you would find that as you look at what an unacceptable impact is—take the cell tower—yes, we have that obligation that Mr. Galvin talks about, but if you are going to put one in, you want to make sure that it has no harmful impact. But again, so the cell tower still exists at Old Faithful. We just did it differently to make sure that there were no unacceptable impacts. And I think that is what this document does as a whole.

But it is a draft and if we have inadvertently dropped a sentence, then I would say let us have a strong discussion and——

Senator SALAZAR. Let me just say, Mr. Martin, I want to associate myself with the letter that my Republican colleagues and Senator Alexander drafted on October 27, which has been inserted into the record today, because I think my colleagues are accurate in their description of the need to be very careful and very thoughtful.

I will still walk away today after this hearing with this impression that this rewrite of the policy was somehow done in darkness and without the understanding of a lot of people who should have been involved, including this committee, recognizing that there was a need from the point of view of parks to revise policies. I think that his very modest request of another 30 days for public comment is one that the National Park Service should very much adhere to.

Mr. MARTIN. Absolutely.

Senator SALAZAR. Let me ask one other quick question, and it has to do with respect to snowmobiles. Under the current policy, it basically says that a variety of motorized equipment has the potential to adversely impact park resources, et cetera. And then that has been deleted and in its place it says, "There are many forms of motorized equipment and mechanized modes of travel. Improved technology has increased the frequency of their use. In some areas and under certain conditions, the use of mechanized equipment and mechanized modes of travel may be determined to be an appropriate use."

In your estimation, Mr. Martin, does this mean that we are going to have more motorized vehicle travel on our national parks than we currently have today?

Mr. MARTIN. No. I think that it will allow us to consider some new technologies like Segways and other things where appropriate. But you have to read up front the definition of appropriate use, which does not diminish values and other things.

But as it pertains to snowmobiles—and I know that has been out there a lot—the executive orders, the regulations, everything are

the same, and our commitment to managing them appropriately, like I think we are trying to do now, is going to remain the same.

Senator SALAZAR. I will just conclude, Mr. Chairman, by thanking you again for the hearing and also suggesting to the Park Service that this is such an important issue for all of us that it might be worthwhile to go back to the drawing board and take a look at revisions where you try to bring not only the parks' employees but also the constituencies for parks, as well as this committee, along with you as you move forward with those revisions.

Senator THOMAS. Thank you very much.

Any closing comments from any of the members?

Senator AKAKA. Mr. Chairman, yes. A concern I have, Mr. Martin and to all of you, is the last time the Park Service undertook revision of its management policies was in 1996, culminating in a new document in 2001. Senator Alexander raised this concern too. That amounts to 5 years for review and input, and the input from career professionals was extensive at that time. It set a course for the Park Service that has been met with wide public acceptance in that time and growth in national park units that reflect diversity in U.S. history. This time it will take less than a year and a half to set in place management guidelines that will affect the Nation's most popular visited destinations, and that is a concern and something for us to think about. Have the professionals been included in the rewrite? It just seems to me that it is being pushed and rushed so fast without getting the wisdom of those who have served in this area.

Thank you very much.

Senator THOMAS. Thank you very much.

Well, gentlemen, thank you. We appreciate it. We would like to have the opportunity to give you some written questions after this hearing, if we may, and ask you to respond to those.

Obviously, it is clearly an important issue. There are differing views. I think most everybody agrees on the priorities of maintaining the resource. On the other hand, if you are going to have a resource, then the people who own the resource ought to have an opportunity to visit it. We have been through a lot of this in terms of snow machines in Yellowstone Park as a matter of fact, and I think it determines that you can have both. You can maintain the resource and have some regulations which allow people to be able to utilize it.

By the way, I believe the Park Service has done a good job over the last several years. They have dealt a lot with the concession issue. They have done a lot with the management part of the entire park, and as the parks grow bigger, that becomes an important item. They dealt with the financing and the business aspects. So we want to thank you for that.

And thank you for being here. Thank you for your opinions, and we will look forward to working with you.

The committee is adjourned.

[Whereupon, at 11:39 a.m., the hearing was adjourned.]

APPENDIX

RESPONSES TO ADDITIONAL QUESTIONS

RESPONSES OF DON CASTLEBERRY TO QUESTIONS FROM SENATOR THOMAS

Question 1. How did the Department of the Interior involve Regional Directors and senior executives in the review process for the Management Policy revisions during your career?

Answer. In my experience, the need for revisions would be discussed and decided during routine meetings of “the Directorate” (generally made up of the Director/Deputy Director, Associate Directors and Regional Directors). This would typically be done as a result of some change in the law, or to respond to some need for guidance/direction, perceived by the group, in response to new issues or conflicts. Subject-matter professionals from within NPS would then be used to draft various sections and chapters, with opportunity for full field review (often multiple times) BEFORE going out for public review.

Question 2. The NPS is now seeking public comment on the Draft Management Policies. Do you agree with the process or could you recommend a better way to go about changing management policies?

Answer. I do NOT agree with the currently proposed process. It would, be my opinion that NPS should halt the current, flawed, process and begin a focused, amendment approach, using the 2001 policies as the base, making only essential amendments to these existing policies, based on clearly articulated needs.

Question 3. How important were management policies to day-to-day operations when you served at unit level and later as Regional Director of the National Park Service?

Answer. They are critical tools in maintaining consistency of management decisions throughout the Service. They were a ready desk reference, guiding most day-to-day decisions. Generally speaking, NPS is a “decentralized organization” with wide latitude being delegated to individual park managers. As a park Superintendent, usually located far from my supervisors (Regional Director, Director), I studied these policies, used them to guide my decisions in order to assure that I was operating within the law, and consistent with NPS authority. As Regional Director, I used them to guide planning for newly-authorized park units, and for development of General Management Plans, as well as to develop my response to issues, conflicts, and, essentially, all decisions involving the parks—including such matters as Concession management, land acquisition, human resource management, and perhaps most important, resource management and protection.

Question 4. The Draft Management Policies addressed during the hearing is a draft subject to revision in the near future. What would be your top recommendation for the National Park Service to use to improve the Draft Management Policies?

Answer. As indicated in my reply to question 2 above, I believe the appropriate way to improve the policies is (as specified in the 2001 policy document)—“NPS policy is usually developed through a concerted workgroup and consensus-building team effort involving extensive field review, consultation with NPS senior managers, and review and comment by affected parties and the general public. All policy must be articulated in writing and must be approved by an NPS official who has been delegated authority to issue the policy. Policy must be published or otherwise made available to the public—particularly those whom it affects and those who must implement it in the Washington office, regional offices and parks”. This process was ignored with the current revision. At the least with a proposed revision of this magnitude, the beginning should have been a public scoping process that explained WHY certain changes were deemed necessary. That question, in my opinion, has not yet been answered fully to the public, nor to the NPS employees who will use the policies to carry out their duties.

Question 5. On October 11, 2005, the NPS Director distributed a memo to the National Leadership Council entitled Revised Procedures for GS-13, GS-14, and GS-15 Selections.

- a. Are you aware of the memo?
- b. Did any such policy exist while you were an NPS employee?
- c. How does such a policy affect the morale of career employees?

Answer. (a) Yes, I have read the referenced memo. (b) I do not recall a formal policy on this subject in my experience. From time to time, there were directives requiring higher-level review or approval for selection of either certain designated positions, or positions, at or above certain grade levels (often with the stated purpose of assisting in the placement of personnel in special circumstances). I do not recall ANY directive outlining an expectation that certain conditions (other than the knowledge, skills and abilities for the position, contained in the vacancy announcement) would be used to evaluate or approve selections. Certainly, in my experience, there was NEVER even a hint that political loyalty would be a factor. (c) I am certain that this policy is having a significant dampening effect among the employees of NPS (along with the already widespread fears of reprisal and retaliation) on the willingness of mid- and senior-level employees to be candid in expressing their professional judgments about the way the Service is being managed and how their parks are being affected. For example, I am in contact with numerous former coworkers who are still employed in NPS, several have indicated they are unwilling to comment on the proposed management policy revisions, out of fear that their comments could be viewed as "not supporting the Secretary's 4-Cs and the President's management agenda".

BIRCH, HORTON, BITTNER AND CHEROT,
Washington, DC, December 27, 2005.

Hon. CRAIG THOMAS,
*Chairman, Subcommittee on Parks, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The following are my responses to the written questions submitted to me following the November 1, 2005 hearing on National Park Service Management Policies.

Question 1. You mention in your testimony that the 2001 management policies are inconsistent with the 1916 Organic Act. Could you summarize the most egregious deviation from the law and what legal risk does the Park Service face if the policy remains unchanged?

Answer. The 2001 version of National Park Service (NPS) Management Policies, adopted in the final days of the Clinton Administration, include a number of provisions inconsistent with the letter and spirit of the 1916 National Park Service Organic Act. For example, an express part of the fundamental purpose of all NPS units is to "provide for the enjoyment" of park units. 16 U.S.C. § 1. In the 2001 Policies, this key phrase is deleted from the "foundation" statement that introduces the Policies. This deliberate deletion of the visitor "enjoyment" reference means that Policies misrepresent the law from the very start and set the Policies on a course inconsistent with the Organic Act.

The single "fundamental purpose" of the Park System, as articulated in the 1916 Act, "IS to conserve the scenery and the natural and historic objects and the wild life therein AND to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the ENJOYMENT of future generations" (emphasis added). The 2001 Policies focus too heavily on the "conserve" portion of the single purpose and systematically diminish the emphasis on visitor enjoyment. For example, section 8.1 of the 2001 Policies concludes a review of the Organic Act by stating that the law "impose[s] on NPS managers a STRICT MANDATE TO PROTECT park resources and values, and a responsibility to actively manage all park uses and when necessary, to regulate their amount, kind, time, and place" (emphasis added). This narrow and strict focus on only one half of the 1916 directive is inconsistent with that Act.

Similarly, the Organic Act expressly directs NPS to (1) provide for visitor use and enjoyment, (2) actively manage Park units for this purposes, and (3) enter into operating concessions agreements to facilitate visitation. 16 U.S.C. §§ 1, 3. Contrary to these statutory directives, the 2001 Policies specifically identify each of these activities as a source of illegal "impairment". See § 1.4.5. Congress could not have established the "no impairment" standard in section 1 of the Organic Act and then directed NPS to engage in activities in section 3 that would violate this standard. Ac-

cordingly, the identification of these statutorily authorized activities as sources of impairment is inconsistent with the 1916 Act.

The anti-visitor enjoyment bias that permeates the 2001 Policies is further demonstrated by language in section 8.2. When confronted with a visitor activity that may cause problems, Park managers are directed to close the area to the use, prohibit the use, or, to limit the use—in that specific order. To be consistent with Organic Act and its emphasis on visitor enjoyment, this order must be reversed so that initial efforts are aimed at managing a visitor use to eliminate or avoid problems (and allowing the use and “enjoyment” to continue) and only if good management cannot fix or ameliorate a problem should the options of closure or prohibition be employed.

Question 2. Was there ever a need to revise the management policies while you were serving as Assistant Secretary? If not, why not? If so, what were the circumstances and why were the policies changed?

Answer. During my tenure as Assistant Secretary of the Interior for Fish, Wildlife and Parks, senior policy makers concluded that NPS Management Policies adopted in the late 1970’s did not appropriately reflect the purpose of the Park System outlined in the 1916 Act. In addition, the Policies did not provide the clarity of direction we thought was necessary for effective management and conservation of Park resources. Efforts commenced in 1987, directed by my office, to rewrite those Policies. The rewrite was completed shortly thereafter resulting in the 1988 NPS Management Policies which remained in force and effect until January, 2001.

Question 3. The Draft Management Policies addressed during the hearing is a draft subject to revision in the near future. What would be your top recommendation for the National Park Service to use to improve the Draft Management Policies?

Answer. At this point, I have no top recommendation for amendments to the proposed new Policies. However, I do expect to be submitting comments to the agency including recommendations for alterations before the close of the public comment period.

Question 4. On October 11, 2005, the NPS Director distributed a memo to the National Leadership Council entitled Revised Procedures for GS-13, GS-14, and GS-15 Selections. As a former Assistant Secretary of DOI, do you think it is necessary to have written procedures for selecting applicants for GS-13, GS-14, and GS-15 positions and is it appropriate to require employees to support the “President’s Management Agenda”?

Answer. It is completely appropriate for the Assistant Secretary’s office to issue guidance for and participate in the selection of senior personnel within NPS at grades 13 and higher. Similar guidance and review procedures were in place during my tenure as Assistant Secretary from 1985 to 1988. During my confirmation by the U.S. Senate, it was stressed repeatedly that I would be held accountable and responsible, by the Congress, for the activities and conduct of the agencies under my supervision (i.e., NPS and U.S. Fish and Wildlife Service). If Congress insists on such accountability, it must ensure that confirmed personnel have the authority and responsibility to effectively oversee the agencies, and agency personnel, under their purview. In contrast, if the Assistant Secretary is stripped of such authority, Congress and its committees must not then seek to hold that office and individual accountable.

In addition, it is appropriate to require senior career personnel to support the “President’s Management Agenda.” He is after all the head of the Executive Branch, is provided with Constitutional authority to direct the activities of all Executive Branch employees, and is held accountable by Congress for management of the federal agencies including NPS.

Question 5. Do you believe that intangible park values such as natural sounds, night skies, etc. are “park resources” and should be protected?

Answer. Conservation of intangible values has a role in park unit management. It is critical, however, to distinguish between those values that are tantamount to resources as compared to the subjective aesthetic values of individual users or groups of users. Solitude is a prime example of a value that is highly dependent, and variable, depending on personal aesthetics. A summer beach visitor to New York’s Gateway National Recreation Area, considers solitude as 100 feet between his beach towel and that of another beach goer. A backpacker in Alaska’s Gates of the Arctic National Park, considers solitude being the only visitor in a 100 square mile area. “Natural quiet” is another value that can be highly subjective. Visitors seeking to climb Mt. McKinley in Denali National Park are almost always dropped off by ski planes. NPS has received complaints from climbers that their enjoyment of “natural quiet” is being impaired by other visitors taking flightseeing tours of Denali from small airplanes (usually flown by the same company that dropped off

the mountain climbers). Obviously, “natural quiet” here is almost totally in the ear of the beholder.

Management policies must clearly distinguish between these values as a resource and these values as aesthetics. Where the former is clearly identified, actions to conserve the resource is fully appropriate and necessary. Where the latter is at issue, NPS must not try to transmute aesthetic values into resources. Moreover, management for subjective aesthetic values must be considered openly and honestly and decisions made with regard to the 1916 Act, the purposes for which individual units were established, and the obligation of a public agency to treat all citizens fairly.

Thank you again for the opportunity to testify on November 1 and provide these additional answers for the record.

Sincerely,

WILLIAM P. HORN.

RESPONSES OF DENIS GALVIN TO QUESTIONS FROM SENATOR THOMAS

Question 1. Mr. Galvin, you were Deputy Director when the 2001 management policies were adopted.

a. What was the impetus for preparing the 2001 management policies and what type of public involvement was there in the process?

Answer. It actually came from the OMB directive to cut regulations (the Paperwork Reduction Act). The directive was to completely revise the directives system: Management Policies—Special Directives—Operating “How to” Manuals. As in 1988, it was entirely an NPS decision to revise the policies, it was not dictated by the Department of Interior. I was deeply involved in the 2001 rewrite. There was extensive, internal review and the draft was sent out for public comment twice. Some of the chapters went through two or three iterations before being finalized.

Question 1b. What do you consider the most significant change brought about by the 2001 policies?

Answer. It was most certainly the expansion of Chapter 1, The Foundation. (Actually, Ch. 1 in the 1988 policies is called the introduction). So, the introduction took on what is now (2001) the Foundation. This chapter increased in size from 4 pages to 15 pages, greatly expanding because of judicial findings questioning NPS’ ability to define impairment. There is more talk in the 2001 policies about the Organic Act, impairment, and mitigation. This resulted in superintendents having less discretion in defining what is impairment. A court finding even stated that not even the NPS could impair resources. Additionally, the 2001 policies added information about soundscape and lightscape management due to important biological research that became available. In 1988 these subjects were treated as visitor use rather than ecological issues.

Question 2. What do you see as the most significant change in the current draft policies when compared with the 2001 document and what impact will it have on the day-to-day operation of individual units?

Answer. That would be the shift in Sec. 1.4.3 to balance use with preservation in day-to-day management of national parks. Chapter 1 of the 2001 edition of Management Policies is entitled *The Foundation*, and is intended to give additional clarity to the clear purpose of the National Park Service as stated in the 1916 NPS Organic Act. The 2001 edition of Management Policies gave a very detailed and clear articulation of how to interpret the 1916 Organic Act’s basic mandate. In contrast, the new draft significantly muddies the water, and has the effect of letting each manager judge for him/herself whether a particular use or form of enjoyment is appropriate or not, and will or won’t cause impairment, without the clear guidance that the 2001 edition of Management Policies provides.

Question 3. How important were management policies to day-to-day operations when you served as Deputy Director of the National Park Service?

Answer. Management Policies are primarily to give clear direction to the professional managers of the NPS so that there is consistent adherence to policy service-wide, and so that each manager has a clear and comprehensive basis for understanding what he/she is to consider when making management decisions. I trained literally thousands of park managers on Management Policies, and would instruct them to pull them out at least once a year and read them. In training classes at Albright Training Center, I would offer case studies and instruct participants to go back to the policies to craft management decisions; this produced consistency. It is absolutely required for a park manager to know the Management Policies when faced with a possible court decision.

Question 4. The Draft Management Policies addressed during the hearing is a draft subject to revision in the near future. What would be your top recommendation for the National Park Service to use to improve the Draft Management Policies?

Answer. I feel that in every respect, the 2001 Management Policies are superior to this current draft, and would urge NPS to abandon this flawed rewrite. If they insist on moving ahead, I strongly recommend that they move forward in the most open, careful, and deliberate process possible, beginning with a scoping process.

Question 5. On October 11, 2005, the NPS Director distributed a memo to the National Leadership Council entitled Revised Procedures for GS-13, GS-14, and GS-15 Selections.

a. Are you aware of the memo?

Answer. Yes.

Question 5b. Did any such policy exist while you were an NPS employee?

Answer. No. This is absolutely unprecedented, not to mention unworkable, bringing that number of candidates to Washington for interviews. Getting a job applicant's package through was not an expeditious thing. Nobody in headquarters has ever wanted to look at GS-13's or GS-14's. Certainly Sr. Executive level (SES) and GS-15's would be brought to Washington; but bringing GS-13 and GS-14 candidates would be a bureaucratic nightmare and a very costly endeavor.

Question 5c. How does such a policy affect the morale of career employees?

Answer. In my opinion, adding bureaucratic restrictions on movement are never good for morale.

RESPONSES OF DENIS GALVIN TO QUESTIONS FROM SENATOR AKAKA

Question 1. In your written testimony, you commented that "Special interests must give way to the national interest if the national parks are to flourish in the future." Is the "national interest" you refer to the general idea of the standard for non-impairment of national parks? What would you identify as the "national" interest?

Answer. Yes, the rub always comes with resource protection over the interests of user groups, and that is what NPS is charged with defending. Congress sets land management policies with the passage of the Organic Act of 1916, the Endangered Species Act, the National Historic Preservation Act, etc. thereby giving the National Park Service the authority to defend resource protection which is in the national interest.

Question 2. Is it correct to say that in your view, the encouragement of too many specialized uses will lead to homogenization of the national park experience, and away from the uniqueness of experiences in individual parks?

Answer. Yes. The National Park Service is one of the great government products where the citizenry enjoys its history and culture. There is great diversity in the National Park System, with 388 units celebrating everything from historic battle sites, the homes and lives of celebrated Americans, recreation areas, to our nation's most magnificent natural scenery in its national parks. Nearly 300 million people visited NPS sites last year, and surveys repeatedly show that over 95% of respondents say they enjoyed their visit. People who enjoy recreating at Disneyworld and watching NASCAR value national parks for the special places they are. For high quality tourism to be sustained in America, nothing is more important than preserving the unique natural and cultural places that make up the National Park System, unimpaired.

RESPONSES OF DENIS GALVIN TO QUESTIONS FROM SENATOR FEINSTEIN

Question 1. What is the risk that these new management policies, in combination with the new rules about fundraising, could lead to pressure on park administrators to push the boundaries of what constitutes "acceptable impacts"? For example, there exists the possibility that a desire by park managers to raise money from private sources, plus potential corporate donors who ask for access in return for donations, could lead to activities in the parks that run contrary to the long-term conservation goals of NPS. What do the new rules do to prevent this type of scenario?

Answer. In answer to the first part of the question, what is the risk that these new management policies, in combination with the new rules about fundraising, could lead to pressure on park administrators to push the boundaries of what constitutes "acceptable impacts"? In searching through the Management Policies, the subject of donors and fundraising appears in four places:

- Chapter 7 Interpretation and Education: 7.6.2 Cooperating Associations excerpting, "Associations may accept donations on behalf of the Service when appro-

appropriate, and when conducted through approved fund-raising efforts” That section, although re-numbered 7.5.2 in the 2005 draft, is not changed.

- Chapter 9 Park Facilities: 9.3.5 Advertising excerpting, “NPS policy does not prohibit ‘donor recognition’ which occurs when the NPS publicly thanks an individual, corporation, or some other entity for their gift or service to the NPS.” The reader is referred to Directors Order 21. The 2005 draft changes “does not prohibit” to “encourages”. It also refers to Directors Order 21.
- Chapter 9 Park Facilities: 9.6.5 Donated Commemorative Works excerpting, “Names of donors will be discouraged from appearing on commemorative works. If they do appear, donor names will be conspicuously subordinate to the subjects commemorated.” The 2005 draft does not change this section.
- Chapter 10 Commercial Visitor Services: 10.2.5.5 Donations to the NPS excerpting, “the National Park Service will not solicit or accept donations or gifts from entities that have, or are seeking to obtain a contract, lease, or other business with the Service. . . . Further guidance on donations is available in Directors Order 21.” The 2005 draft does not change this section.

In summary, the changes in this area do not appear major. It is imperative that the changes proposed to Directors Order 21 be consistent with this policy direction. The dangers cited in your question are very real. National Parks are fundamentally public institutions and should remain so. The financial support from the general tax base dwarfs the existing and potential amounts to be received from any other source. These are NATIONAL parks and should remain so.

RESPONSES OF THE NATIONAL PARK SERVICE TO QUESTIONS FROM SENATOR THOMAS

Question 1. What are the reasons for updating these policies in the first place?

Answer. The National Park Service (NPS) strives to attain the highest possible level of management excellence allowing us to provide our managers and staff with the tools they require to best meet our mission. As a result, NPS Management Policies have been periodically reviewed and updated. In addition the NPS and the Department of the Interior received repeated requests from the House Subcommittee on National Parks, Recreation, and Public Lands to re-write or at least substantively review Management Policies 2001. At an April 25, 2002, hearing Congressman Radanovich, who was then chairman of the subcommittee, was especially emphatic about this request. He again inquired about a review in a June 6, 2002, letter to Director Mainella. In a September 24, 2003, letter to Chairman Radanovich, the Director stated that the NPS had begun a systematic review of the Management Policies to assure they were in alignment with both the Organic and General Authorities Acts, and with Secretary Norton’s 4 Cs—“Consultation, Cooperation and Communication, all in the service of Conservation.” In a follow-up question regarding the status of a review of Management Policies, asked by Senator Bingaman from a May 10, 2005, hearing before the Senate Subcommittee on National Parks, the Director responded that the NPS Management Policies issued in 2001 were under review in the Office of the Assistant Secretary for Fish and Wildlife and Parks, and until that review is concluded, we will not make any decisions about whether or not we plan to seek any changes in the Management Policies. At a December 14, 2005, House Subcommittee on National Parks hearing on the NPS Organic Act, Congressman Pearce, Chair of the Subcommittee, reaffirmed “that it was this Subcommittee in April 2002—not Deputy Assistant Secretary Paul Hoffman—that initiated an evaluation of the 2001 NPS Management Policies when then-Subcommittee Chairman Radanovich requested Park Service Director Mainella to review the 2001 Management Policies . . .”. Congressman Pearce also stated, “I am pleased that the Department of the Interior and the National Park Service had the courage—despite a campaign against it—to evaluate its management policies and find areas where it can improve operations.”

As a practical matter, the Management Policies are reviewed nearly every day, and we always seek ways to make them more helpful to our field staff and ensure that they accurately reflect our statutory responsibilities. One of the routine elements of this review process is to ensure that NPS policies are consistent with Departmental policies. An especially noteworthy outcome of the review process and the 2002 hearing was the development of Director’s Order #75A: Civic Engagement and Public Involvement. (Director’s Orders are a convenient mechanism for updating Servicewide policies without the necessity of republishing the entire Management Policies document.) The NPS believed that Director’s Order #75A would address at least some of Congressman Radanovich’s concerns, as well as complement the Secretary’s 4Cs initiative. Also, the NPS Wilderness Steering Committee had embarked

on the task of updating Director's Order #41, which addresses wilderness stewardship policy.

Management of the national park system is always a matter of interest to the Department, and the Assistant Secretary adopted a fiscal year 2005/2006 goal to "Improve the NPS Management Policies." Deputy Assistant Secretary Paul Hoffman, who provides policy guidance to the NPS, was tasked with lead responsibility. In June of 2005 Congressman Pearce, the new chairman of the subcommittee, expressed his expectation that the Service's "systematic review" would culminate in a revised edition of Management Policies. Because the Deputy Assistant Secretary's draft was already in progress, the Director informed Chairman Pearce that the new draft of Management Policies would be completed by September 2005. In July 2005, the Deputy Assistant Secretary presented for NPS's review his initial recommendations for updates to the policies. This document was intended to be a starting point for discussion. NPS career employees were then assigned to review and evaluate the 2001 Management Policies. For example, we knew that we needed to place more emphasis on civic engagement and public involvement; update the planning procedures in Chapter 2; correct some aspects of the wilderness stewardship procedures in Chapter 6; and discourage construction projects that are excessive in size or cost, or too expensive to operate.

There are new laws, executive orders, and regulations that impact park management since the policies were last updated in 2001. NPS now has increased responsibilities for homeland security, such as protecting national icons against attack. There have also been changes in the demographics of visitors, rapid population growth around parks, improvements in technology that provide new ways to enjoy parks or reduce adverse impacts on resources, and a new focus on civic engagement and cooperative conservation. These changes, combined with expectations from Members of Congress, prompted the review and update of the management policies.

Question 2. If I'm a visitor to a national park and these new Management Policies went into effect, what would be different from my eyes?

Answer. The expected benefit from the revisions relates more to how the NPS accomplishes things rather than what it does, that is protect parks for future generations and allow their use consistent with that goal. In the short term, a visitor to a national park would experience no change as a result of implementing the draft management policies; the same standard of excellence will apply. Over time the NPS decisions should be supported more by communities, result in financially viable alternatives that could be implemented, and resources would be improved resulting in the parks which are better preserved for future generations (e.g. improved fire management and control of exotics). There should be improvement in natural and cultural resource conditions as well as the physical resources (e.g., improvement of buildings through improved facility management). The appropriate use of parks would also be emphasized resulting in continued enjoyment of parks by current and future generations. Despite criticisms to the contrary, the draft management policies are intended to, and do, maintain the fundamental policies underlying the NPS Organic Act and other regulations or laws, but also provide more clarity and improved approaches to ensure that the Organic Act's objectives are, in fact, achieved. For example, the draft policies direct more clearly than earlier versions that "park resources and values are [to be] maintained in as good or better condition for the benefit of future generations." It is our intent that as a result of these policies, the only differences discernible to park visitors over time will be improvements (e.g., restoration of park resources, better planning and implementation of park projects). The draft management policies' new emphasis on cooperative conservation, the legacy goals of the Administration, sustainability, and management excellence should also support this goal.

Question 3. What are some of the areas of these Draft Management Policies, as you say, make it more beneficial and user-friendly for park managers?

Answer. The proposed revisions to the management policies provide more clarity, flexibility and tools for superintendents and park managers in determining each park's unique needs. The draft policies outline ways to make decisions that are better supported by science and the public, thus more effectively accomplishing the goals of managers. The document also outlines more professional training for managers giving them the tools to better manage the parks. This draft was written as a whole by park managers, not segmented like the previous document. This better integrates all of the administrative resources making managers more effective.

For the first time, park managers will find clear procedural direction for making management decisions because the draft policies define important terms such as "unacceptable impacts," "appropriate uses" of parks, and "professional judgment". These often used terms can be easily misconstrued and misused. Offering a single agreed upon definition for each term will result in greater understanding and ready

and consistent application by park managers in order to better protect park resources and values, and provide for the enjoyment of the same.

In addition, the draft policies explicitly describe management tools that are intended to assist park managers in solving some of the complex management problems facing parks today. These tools include the use of adaptive management, the use of best available technology, and the principle of cooperative conservation.

Finally, the draft policies focus on management excellence and sustainability by prioritizing a comprehensive project review process that will ensure that “projects are essential to the mission, achievable, and sustainable as well as practicable and reasonable.”

Question 4. The public comment period ends February 18, 2006. How do you intend to use the public comments?

a. What are the comment opportunities for employees and how do you intend to use their comments?

b. What is the process for finalizing the management policies?

c. When do you expect to have the final document available for public release?

Answer. Comments from all sources (internal and external) continue to be collected and processed by NPS Office of Policy staff. Comments may be submitted through a variety of methods, including email; the Planning, Environment and Public Comment (PEPC) web page; and via regular mail. Once the comment period closes, all comments will be reviewed, analyzed, and organized by subject and content. The NPS policy staff together with NPS subject matter experts and field staff will make recommendations for revising the draft policies based upon the substantive comments received during the comment period. We expect many additional career professionals at all levels of the organization to be included in preparation of the final. The recommended revisions will then be submitted to NPS senior leadership for approval. A final draft will then undergo close review and final editing by a broad group of NPS professionals including NPS and DOI managers. The Director may also consult with other knowledgeable parties such as the NPS Advisory Board. The new edition of Management Policies 2006 will be finalized upon the Director’s signature.

The NPS will then prepare a document summarizing the content of the comments and the NPS response to those comments. The summary will be posted on the web and the public will be notified of its availability and the availability of the final Management Policies, via Federal Register notice, via e-mail notice to anyone who has specifically requested to be notified and via a broadly distributed press release. While the NPS has not set a publication date for the final document, we expect it to be completed in 2006. This depends in part upon the type and number of public comments and the time required to respond adequately.

The final document will consider Congressional input as well as comments from the public (including the issues raised in these questions) before any final decisions are made. Although each answer will not repeat that we will consider all comments—both internal and external—in adopting a final version of the new management policies, that is implied in each such answer.

Question 5. Do the proposed policies alter or reduce the effects of any laws or regulations?

Answer. No, the proposed policies explicitly recognize that “NPS policy must be consistent with these higher authorities. . . .” The draft management policies are intended to improve the internal management of the NPS; they are not promulgated as a rulemaking and are not intended to carry the force and effect of law. Where the text of a policy relates to a particular statute or regulation, it is the statute or regulation that controls, not the text of the policy. As in past Management Policies any policy may be waived by the NPS Director if it is not in conflict with the law.

Question 6. Please provide justification for the need to ‘balance’ the management policies now given the fact that ‘balance’ has never been used as justification in 89 years of park service management, nor have you been asked to consider ‘balance’ at the direction of this committee.

Answer. We assume that this question refers to the following language in Section 1.4.3 of the draft management policies. The use of the word balance is appropriate in light of recent court interpretation of the Organic Act and the language in the draft that comes before its use and the language that follows it.

The Park Service recognizes that activities in which park visitors engage can cause impacts to park resources and values, and the Service must balance the sometimes competing obligations of conservation and enjoyment in managing parks.

This language incorporates the language used by the U.S. Court of Appeals for the 10th Circuit in *Southern Utah Wilderness Alliance v. Dabney*, 222 F.3d 819 (10th Cir. 2000) in interpreting the NPS Organic Act, as follows:

Although the Act . . . place[s] an overarching concern on preservation of resources, we read the Act as permitting the NPS to balance the sometimes conflicting policies of resource conservation and visitor enjoyment in determining what activities should be permitted or prohibited. . . . The test for whether the NPS has performed its balancing properly is whether the resulting action leaves the resources “unimpaired for the enjoyment of future generations.”

Id. at 827. We read the word “balance” in this context to mean that NPS should consider and weigh all relevant information in determining whether an activity would be an “appropriate use” in the park unit. Among other things, and as the proposed policies make clear, an “appropriate use” would not have “unacceptable impacts.” In this decision-making process, the draft management policies continue to embrace the fundamental concept that when there is a conflict between enjoyment and conservation, conservation of the resources will prevail, as reinforced by the several statements in the draft document cited in the answer to Question 7b, below. For example, the following two statements appear in the same section of the draft policies as the sentence containing the word “balance,” as follows:

. . . Congress established the overarching mission for the national parks, which is to protect park resources and values to ensure that these resources and values are maintained in as good, or better, condition for the enjoyment of present and future generations.

Because the enjoyment of park resources and values by present and future generations is dependent on their preservation, when there are concerns as to whether an activity or action will cause an impairment, the Service will protect the resources . . .

This approach to managing parks is entirely consistent with past management, firmly rooted in the resource protection goal while providing an improved tool for determining appropriate activities.

Question 7. After the 2001 Management Policies were adopted, Fran Mainella testified before the House Subcommittee on National Parks, Recreation and Public Lands that “there can be no outdoor recreation without protection of the resource first, and if you are going to err, you will err on the side of the resource.”

a. Does the Park Service still hold to that view?

b. If so, please explain where in the proposed changes that view is reflected?

Answer. Yes. As a key tenet of the Organic Act of 1916 that is reaffirmed by the General Authorities Act of 1970, as amended, the draft management policies repeatedly embrace the fundamental concept that when there is a conflict between enjoyment and conservation, conservation of the resources will prevail. The following statements are a few of the many examples from the draft policies that reinforce that important and guiding principle.

Introduction: “When proposed park uses and the protection of park resources come into conflict, park managers are obligated to ensure that the resources and values for which the park was created are not diminished.”

Introduction: Conserve, Preserve and Protect: “The choice of any one of these words, within these policies, is not intended to, and should not be construed to imply a greater or lesser restriction on opportunities for visitor enjoyment or level of care for park resources and values.”

Section 1.4.3: “when there are concerns as to whether an activity or action will cause impairment, the Service will protect the resources . . .”

Section 1.4.3: “. . . Congress established the overarching mission for national parks, which is to protect park resources and values to ensure that these resources are maintained in as good, or better, condition for the enjoyment of future generations.”

Section 4.1: “In cases of uncertainty as to the impacts of activities on park natural resources, the Service will protect the natural resources . . . and strive to reduce uncertainty by facilitating and building a science-based understanding.”

Section 1.10: Letter from Secretary of the Interior, Franklin K. Lane to the first Director of the National Park Service, Stephen T. Mather, “. . . that the national parks must be maintained in absolutely unimpaired form for the use of future generations as well as those of our own time . . .”.

Section 1.4.1: 1978 amendment to the 1970 General Authorities Act, "Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose of section 1 of this title (the Organic Act) to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, as may have been or shall be directly and specifically provided by Congress."

Question 8. Omitted by the Committee.

Question 9. You have said that the reason for the change from the 2001 Policies is to provide more clarity, but you propose to remove sections which unambiguously place conservation and resource protection as the National Park Service's primary purpose. You also propose to remove language describing how the courts "have consistently interpreted the Organic Act, in decisions that variously describe it as making 'resource protection the primary goal' or 'resource protection the overarching concern' or as establishing a 'primary mission of resource conservation,' a 'conservation mandate,' an 'overriding preservation mandate,' and 'overarching goal of resource protection,' or 'but a single purpose, namely conservation.'"

a. Does the National Park Service still believe that its overarching and primary purpose is conservation and resource protection?

b. If so, how does removing this language provide any clarification?

Answer. Yes, as the quotes in the above answer to question 7 make clear. Please review the entire introduction to the draft policies and all of Chapter one including the many components of Section 1.4 which includes significant information relevant to this question. The clarity provided in this document cannot be found by taking one quote out of context but must be read as a manager would read the document, in its entirety. This can be found in Section 1.4 as well as Chapter one as a whole. Section 1.4.1 discusses the laws governing park management, 1.4.2 discusses the terms Derogation and Impairment, 1.4.3 pertains to enjoyment of resources without impairment, 1.4.3.1 discusses appropriate use, 1.4.3.2 discusses unacceptable impacts and prevention of impairment, 1.4.4 discusses the prohibition of impairment, 1.4.5 discusses what constitutes impairment, 1.4.7 discusses decision-making to avoid impairment. The draft management policies at Section 1.4.3., state "Congress established the overarching mission for national parks, which is to protect park resources and values to ensure that these resources are maintained in as good or better condition for the enjoyment of future generations." While the NPS continues to assert that its overarching mission is the protection of park resources, the agency also acknowledges its strong commitment to provide for public enjoyment of park resources and values. As the courts have repeatedly found in upholding NPS decisions over the years reflecting both conservation and use, these obligations are not mutually exclusive. The language within the policies is an effort to recognize the commitment to resource protection and visitor enjoyment, as expressed in the 1916 Organic Act. Some of the new and revised language embodies NPS's effort to provide better guidance and tools to park managers for these kinds of decisions. In addition, NPS staff sought to eliminate redundant and inconsistent language and to provide clarifying language where they believed it to be appropriate. We will be carefully considering the comments submitted from both the public and internal sources to see if these changes improved clarity.

Question 10. To maintain relevance in the 21st century the National Park Service must offer sites and programs, such as the proposed "Peopling of America" theme survey, that commemorate the history and culture of all peoples who've contributed to the evolution and development of this nation.

a. Will rewrites to management policies that require officials to first consider available funding before making new park feasibility recommendations (Sec. 1.3.3) undermine ongoing efforts by NPS staff to tell the full story of the United States?

b. And if so, does that then increase the risk of our national parks becoming increasingly less relevant to a rapidly growing segment of the American public?

Answer. No. But one key factor is financial. We have to be prudent in the selection of new parks. However, both we and Congress, in considering the establishment of new parks must take into account how doing so will affect the operation of the remainder of the system.

The NPS is continuing to tell the full story of the United States through the development of new historical themes, studies, and interpretive programs associated with the existing national parks. For example, the Charles Pinckney National His-

toric Site near Charleston, South Carolina, was established to commemorate Charles Pinckney and his role in the development of the United States Constitution. Because of extensive archeological work undertaken over the past two decades, the NPS staff at the Pinckney site now interprets the influences of the African Americans in the development of the property.

In addition, the National Historic Landmarks (NHL) and the National Register of Historic Places (NR) programs are increasingly recognizing historic places associated with the nation's diverse cultural groups through NHL designations and NR listings. The NHL files are digitized and available to the public, upon request, and the NR nominations associated with diverse ethnic groups are in the process of being digitized. Additional NPS programs—the Historic American Buildings Survey, the Historic American Engineering Record, and the Historic American Landscapes Survey—also are increasingly documenting properties associated with the nation's cultural groups. These records are maintained by the Library of Congress (LOC) and are available electronically through the LOC website.

Through these and other activities, the NPS is determined to maintain and enhance the relevancy of the National Park System to all segments of American society. While the addition of new parks associated with cultural groups may sometimes be helpful in expanding the NPS ability to tell the nation's stories, it is not the only way to address this issue. The existing parks and programs continue to offer rich opportunities to expand our interpretive opportunities.

Question 11. I assume that something caused current leadership to take a hard look at its 2001 management policies. Please provide two or three examples of incidents or management decisions that occurred within the national park system in the past four years that make it necessary to revise the management policies.

Answer. Please refer to the answer for question 1. It would be inaccurate to attribute a single management decision or incident as the driving force for revising the Management Policies.

Question 12. What changes do you anticipate in park management at Grand Teton, Denali, Big Bend, Rocky Mountain, Great Smoky Mountains, Olympic and other parks if these policies are implemented?

Answer. Adoption of the draft policies would result in better informed decision making at Grand Teton, Denali, Big Bend, Rocky Mountain, Great Smoky Mountains, Olympic and all other National Park System units. Many of the proposed revisions made to the 2001 document were based on the guiding principle of providing park managers with clear, concise, and relevant statements of policy and procedures on which to base management decisions. We believe that the final revised document will achieve that goal. In the draft policies, managers will find detailed definitions of key management terms and descriptions of up to date management tools. This draft provides the tools for park managers to accurately define “unacceptable impacts” to park resources, “appropriate uses” of parks, and “professional judgment” to facilitate consistent and quality decision making.

Other improvements affecting park management include the draft policy's emphasis on cooperative conservation and best management practices. The draft management policies direct managers to develop and utilize an improved understanding of the interrelationships within ecosystems and to find solutions to difficult management questions through the use of best available technology, the application of adaptive management, and the use of better baseline data. Managers will also find direction to utilize contemporary business practices and an emphasis on cooperative conservation and civic engagement. The draft policies will result in better articulated decision making processes and cooperative and collaborative relationships with neighboring agencies and communities. In turn, these will contribute to better public understanding of the NPS mission.

The draft policies also remove language from the 2001 edition that appeared inconsistent or confusing. The tone of the document has been improved so that there is no misunderstanding about the NPS's commitment to public enjoyment of park resources and values. The draft policies also make clear that “in cases of uncertainty as to the impacts of activities on park resources, the Service will protect the natural resources and strive to reduce uncertainty by facilitating and building science based understanding.” Ultimately, the clear direction provided in the draft policies would enhance the ability of park managers to implement sustainable, science based, collaborative decisions that, in turn, would achieve the ultimate objective of protecting park resources for this and future generations.

Question 13. Will the proposed policies allow more mining, or oil and gas leasing, exploration, or production in NPS units?

Answer. No. The draft management policies make no substantive change in these areas. Oil, gas or mining activities are only allowed in accordance with valid existing rights at the time the park unit was established and are subject to reasonable

regulation to protect park resources and values. The establishment of park units eliminates the possibility of oil and gas leasing taking place or the ability to locate new mining claims in the park unit unless Congress specifies otherwise.

Question 14. Do the proposed policies change wilderness management, wilderness studies or the protection of wilderness characteristics in areas recommended for wilderness designation?

Answer. The draft Management Policies would not change wilderness studies or the protection of wilderness characteristics in areas recommended for wilderness designation. They would change wilderness management to the following limited extent, as explained in Section 6.3.1:

Lands that were originally deemed eligible [for wilderness designation], but which were not included in the wilderness recommendation sent to Congress, will no longer be managed under the provisions of the [wilderness management] policies. They will, however, be managed in accordance with the same high standards to which all other NPS lands are managed. . . . The National Park Service will take no action that would diminish the wilderness eligibility of an area possessing wilderness characteristics until the legislative process of wilderness designation has been completed. For wilderness eligible and study lands, no actions that would diminish the existing character and values of the area will be taken.

Question 15. Is it true that the new policies diminish air quality standards?

Answer. No. The draft policies at 4.7.1 continue to state that "the NPS has a responsibility to protect air quality under both the 1916 Organic Act and the Clean Air Act. . . . The Service will assume an aggressive role in promoting and pursuing measures to protect these values from adverse impacts of air pollution. In cases of doubt as to impacts of existing or potential air pollution on park resources, the Service will err on the side of protecting air quality and related values for future generations."

Question 16. Will the proposed policies expand hunting or commercial grazing in park units?

Answer. No. Hunting and commercial grazing are uses of park resources that only occur when authorized or mandated by Congress.

The only change made to commercial grazing at all was to clarify that a number of park units have within their establishing legislation or proclamations a specific provision authorizing or directing that hunting or commercial grazing be allowed. In most cases, this is because those activities were conducted within the area prior to establishment as a park unit or were determined to be part of the historic character of the park. The policies also clarify the distinction between commercial grazing and the grazing of recreational trail stock (e.g., stock use for authorized commercial horseback trips).

The draft policies do clarify that Congressionally authorized uses require the NPS to ensure that these activities are appropriate uses and the manager may limit or regulate these uses to protect park resources consistent with the provisions of the enabling legislation.

Question 17. Will the proposed policies allow more commercial operations inside parks?

Answer. No. Like the current policies, the draft management policies reflect the applicable legal requirements. The development of public accommodations, facilities and services in parks is generally limited by statute to those services that are necessary and appropriate for public use and enjoyment of the park unit in which they are located. Various parks are developing commercial services plans with public input, using best available science and other information in order to determine the appropriate level of visitor services to be provided by commercial services.

Question 18. Do the proposed policies replace evolution with creationism?

Answer. No. The document maintains the long-standing NPS tradition of commitment to science. Scholarship continues to serve as the basis for decision making, and evolution is acknowledged as a biological process present in parks.

Question 19. Do the proposed policies change the role of superintendents in managing parks?

Answer. The superintendent's role is clarified and strengthened and it continues to be the park superintendent's job to make decisions about what uses may be allowed that will provide for enjoyment and ensure that the resources are kept in as good a condition, or better, for the enjoyment of present and future generations. The draft policies provide clear guidance about what is entailed in determining appropriate uses of parks and provide guidance on what is meant by the phrase "in the professional judgment" of park managers. The draft policies define "professional judgment" as a process that includes consultation with resource professionals and

subject matter experts, best available science, civic engagement, public input, and cooperative conservation. The draft policies encourage all superintendents to ask the same questions, while recognizing that the answers will be unique to particular resources.

Question 20. You stated in your testimony that development of new technology has necessitated the need to revise the management policies.

- a. Please explain the “new technology” that you claim requires proposed changes.
- b. Is any of this same technology utilized by the NPS in managing the parks?
- c. If so, provide examples.
- d. Is there a need to expand application of new technologies within parks?

Answer. It would be difficult to imagine that any government agency could remain relevant and effective in the 21st century without embracing new technologies. This is profoundly true within the NPS. The draft management policies do not direct park managers to utilize certain technologies, but they do direct managers to embrace new science and technology to resolve management issues and to assist in fulfilling our mission. Park managers must also be aware of what new technologies do to uses of the parks and both increasing and decreasing impacts on park resources. For example, the draft policies encourage the use of adaptive management to incorporate new technologies and scientific advancements to test their efficacy and applicability in addressing issues in areas such as visitor use and wildlife management. The policies also direct managers to incorporate the use of best available technology (BAT). Currently, park managers use the concept of BAT to minimize the effects of certain methods of transportation, notably snowmobiles and snowcoaches in Yellowstone National Park. As new technologies such as four-stroke motors and quieter airplanes become available, it is easy to imagine that park managers would incorporate BAT to minimize adverse effects to park resources and values wherever practicable and appropriate. The draft policies provide this forward thinking guidance. New technologies also make possible richer visitor experience; for example, new ski equipment has changed uses in Grand Teton, cell phones have affected rescue operations at Denali, bicycles have changed the use at Canyonlands, GPS has changed route-finding in many parks, and hand-held audio devices have provided historic and other narration in various park units. The use of new technologies, as appropriate, is also consistent with other provisions in the policies, such as Sec. 1.6, which continues to call for NPS to demonstrate environmental leadership.

Question 21. The Organic Act of 1916 is the foundation for operating the National Park System. The law is very direct in outlining the Park Service’s responsibilities and it is enforceable in court. Page 6 of the proposed policies states that the policies, “do not create any right or benefit, substantive or procedural, enforceable at law. . . .” Why are the policies needed if they are not enforceable and the law clearly states your responsibilities?

Answer. Management Policies are necessary to set the framework and provide direction to NPS employees for making management decisions in administration of the National Park System and NPS programs. They often go beyond the text of the statutes and regulations on which they are based to clarify and provide policy guidance in particular decision-making situations where the law allows agency discretion. Contrary to the premise of the question, the governing laws and regulations (including the Organic Act of 1916) do not always provide clear direction for a particular management decision. The courts have recognized such ambiguities, and have also noted the broad discretion afforded NPS in making various management decisions consistent with the Organic Act. NPS Management Policies are thus an important tool that encourages appropriate Service-wide consistency in administering NPS units and programs. They are policy and not law, however, and while adherence to Management Policies by NPS employees is generally binding for internal management purposes only, the policies themselves address a wide variety of situations, allowing waivers and modifications with justification.

Question 22. Two years after the current policies were issued, NPS Director Fran Mainella wrote to the House Resources Committee that she had “already begun a systematic review of the NPS Management Policies of 2001,” and that “there may be some areas fin the 2001 policies) that may be inconsistent with the President and the Secretary’s position regarding access to their National Parks.”

- a. What areas of the 2001 policies are inconsistent with the President’s and the Secretary’s position regarding access to their National Parks?
- b. How are they inconsistent?
- c. What has been done in the 2005 document to correct each inconsistency?

Answer. We have found that some who read the 2001 policies may get the mistaken impression that the Service considers access for public enjoyment a distant and secondary purpose of the parks. We have therefore taken steps to make it clearer that the Service fully embraces the “enjoyment” dimension of the Organic Act.

We have also rephrased some of the policies in subtle but important ways to replace what had been a negative statement with a positive statement. This does not mean that the substance of the policy has changed; it means that policy is stated in a more positive way so that the reader will be less likely to infer that the NPS is hostile toward public use and enjoyment.

Question 23. There are many references to sustainability within these policies that seem to equate to financing the NPS mission. Given that we, Congress, provide the NPS funding through the appropriations process, it could be thought of as usurping congressional powers. Obviously this is not the intent. Nevertheless, a clear understanding of sustainability needs to be established. Please explain.

Answer. The concept of sustainability is intended to address the capacity of NPS to manage the resources—natural, cultural, human, physical, fiscal—entrusted to the agency in a way that can be supported over time. This includes better supported decisions that can be sustained from a policy, a practice, financial soundness and good scientific basis. Our conversations with members of our appropriations committees and their staff indicate they expect us to focus on sustainability and that NPS cannot make decisions that simply assume future funding increases are always available to pay for its undertakings. Thus, whether it is the out-year operational implications of a newly constructed facility, or the short-term cost implications of hiring a permanent rather than temporary employee to accomplish work, the draft policies reinforce the need for managers to consider sustainability. In other instances, sustainability is deployed in facility design that incorporates low energy usage (such as light fixtures that turn off after no motion in a room for a specified period of time), enhanced use of recycled materials, passive heating, and other similar design approaches that cause a facility to be more “environmentally friendly”.

Question 24. On October 18 when the revised draft was released the Park Service issued a press release stating that the revision to the management policies was being undertaken “in response to interest from Congress,” and that “park managers had also urged revisions that addressed the changing needs and circumstances of parks.”

a. What is the “interest from Congress” that the NPS is responding to by changing the management policies.

b. What are the “changing needs and circumstances of parks” that led park managers to urge revision to the policies?

c. Which specific parks have the most urgent and compelling need to change the management policies and why?

Answer. Please refer to the responses to question 1.

Question 25. The press release also stated that “nearly 100 NPS career professionals were involved in drafting or reviewing the changes over the past few months”: This equates to less than one third of the managers responsible for implementing the management policies.

a. How many people in the NPS have planning and management responsibilities?

Answer. The question appears to reference the number of park superintendents and other upper level NPS managers. Although the Federal Personnel and Payroll System (FPPS) indicates a total of more than 3,000 supervisors, managers, and management officials in the NPS, this total includes many people who do not carry out the level of planning and management envisioned by the question. The actual number would be much lower depending upon how planning and management responsibilities are defined. Our practice is to prepare a draft document, which is now available, and our intent has always been for any interested staff to be able to comment once a draft document was produced.

Question 25b. How many people were involved in the 2001 rewrite?

Answer. It is impossible to say, because the program managers who provided most of the initial input were not asked to record the names of all those with whom they consulted or who participated in various work groups that were set up to focus on particular topics. Also, to promote efficiency, many of the substantive suggestions for improvement were consolidated by program managers and regional offices, without a specific tally of the number of individuals who contributed. We would estimate at least 300.

Question 25c. Please explain differences in the review processes between the 2001 and 2005 management policies.

Answer. The 2001 process essentially began with publication in June 1998 of a notice of intent to update the 1988 edition of Management Policies. The notice asked the public to review the 1988 document and provide information or suggestions that the NPS should consider. NPS program managers then produced draft revisions to the 1988 edition which were circulated for internal NPS review and comment. NPS program managers considered comments received from the internal review, and a second draft was released for internal review and comment. Six months later a third

draft was released, for both internal and public review and comment. In April of 2000, comments received were distributed to NPS program managers for consideration. During this process, the NPS was involved in an important lawsuit pertaining to the Organic Act's prohibition of impairment. Personnel within the Assistant Secretary for Fish and Wildlife and Parks' office participated extensively in drafting the policy section relating to impairment. A final draft was then prepared and underwent final review and editing by senior NPS and DOI managers. The finished product was approved by the Director in December 2000.

The 2005 process is just beginning. In July 2005, the Deputy Assistant Secretary for Fish and Wildlife and Parks presented for NPS's review his initial recommendations for updates to the policies. This document served as a starting point for discussion. Starting with a meeting of the National Leadership Council, consisting of approximately 20 senior NPS managers, NPS career employees were then assigned to review and evaluate the 2001 Management Policies. At the same time, they were asked to consider other revisions or additions that would improve the policies from the NPS's perspective. For example, NPS staff integrated the policy work that was already completed or underway on topics such as civic engagement, park planning, and wilderness stewardship. This career staff work resulted in the draft document that was issued October 19 for review and comment by the public and by all NPS employees.

The draft document that was released is by no means a final product. We expect to receive additional input from hundreds of NPS career staff who had not participated in the initial stages of this process. We also expect to receive substantial input from the public. When the comment period closes on February 18, the comments will be reviewed, analyzed, and organized by NPS policy staff together with NPS subject matter experts and other staff who participated in the initial drafting process. Recommendations for how, or whether, the comments necessitate refinements to the current draft will then be presented to the senior leadership team to determine appropriate action. The final draft will also undergo review by the NPS Advisory Board. In addition to public review a final draft will undergo close review and final editing by senior NPS and DOI managers as has been done with previous policies. The new edition of Management Policies 2006 will be finalized upon the Director's signature.

Question 26. The Organic Act states "provide for" enjoyment as directing the NPS to allow recreation, there is no requirement to "provide enjoyment" the subtle word "for" is critically important. Please show the Committee where the 1916 Organic Act "requires" visitor recreation.

Answer. The 1916 Organic Act does not "require" visitor recreation as such, but it does state, as this question suggests, that part of the fundamental purpose of park areas is "to provide for the enjoyment" of park resources and values so as to leave these resources and values unimpaired "for the enjoyment" of future generations. Our current and draft Management Policies both note that "[t]he 'enjoyment' that is contemplated by the statute is broad . . . , includ[ing] enjoyment both by people who visit parks and by those who appreciate them from afar . . . [and also including] deriving benefit (including scientific knowledge) and inspiration from parks."

Of course, recreation is a form of enjoyment, and the NPS has welcomed appropriate recreation in the parks from the earliest days. Recreation in parks has a long history, dating back to the creation of the earliest parks. The Organic Act, written in that context, clearly considered enjoyment to encompass, where consistent with protection of park resources, various forms of recreation. The 1925 management policies, for example, stated that "[a]ll outdoor sports within the safeguards thrown around the national parks by law, should be heartily endorsed and aided wherever possible. Mountain climbing, horseback riding, walking, motoring, swimming, boating, and fishing will ever be the favorite sports."

The word "recreation" itself has a broad meaning, including everything from quiet inspiration to thrill-seeking. Not all forms of recreation will be appropriate uses in parks. Management Policies provide guidance to managers on how to determine what types, levels, and other specifics of visitor recreation are appropriate in the various park units.

Question 27. You talk about "enjoyment" of the Parks as one of the fundamental purposes of the National Park Service, but is enjoyment to include something more than enjoyment of the natural wonders of the Parks? In other words, enjoyment could include thrill riding on all-terrain vehicles. Is that included in your concept of enjoyment which is a fundamental purpose of the Park Service?

Answer. No. The 1916 Organic Act, as amended and supplemented, states that part of the fundamental purpose of park areas is "to provide for the enjoyment" of park resources and values so as to leave these resources and values unimpaired "for

the enjoyment” of future generations. The governing park law thus contemplates a connection between the enjoyment and the resources and values to be protected.

People do come to parks for a wide range of enjoyment. To be sure, those who have climbed Denali or run the rapids of the Colorado River in Grand Canyon have experienced a thrill. Visitors in the wilds of Gates of the Arctic have experienced and enjoyed solitude, and those on the National Mall or Independence Hall have experienced and enjoyed history. To fully understand what is meant by the draft, please read the Introduction, Chapter one and Chapter eight.

“Thrill-riding” on all-terrain vehicles (ATV) would not seem to have the appropriate connection with park resources and values, although using an ATV, where authorized, to seek access to park resources might, provided that unacceptable impacts do not occur. To help the NPS manager make a decision about any proposed use, the draft policies expand upon previous guidance in order to determine what constitutes “appropriate use” of, and “unacceptable impacts” to, parks.

Question 28. In numerous examples throughout the document, the words “The Service will” have been replaced with “The Service will strive to”. It would seem that this change reduces the goal to making an effort, rather than achieving a result. Does this imply that if the NPS fails to maintain resource integrity it has not failed to adhere to policy because it at least tried? Does this mean the NPS will reduce its accountability to the American people because it at least tried?

Answer. No. This change will in no way reduce our commitment to protect park resources or values, to maintain resource integrity, or to be accountable to the American people. This choice of words is basically a “reality check,” acknowledging that the goals that the Service has set for itself may not always be totally achievable or totally within the control of NPS. The term “strive to” is not new to the draft policies; it appears 19 times in the 2001 edition and has never before been the basis for challenging the Service’s commitment to fulfill its mission.

Question 29. In your proposed new definition of impairment, you require that an impact be “significant” to constitute impairment. Previously, impairment was considered to be any impact that in the professional judgment of the responsible National Park Service manager would harm the integrity of Park resources or values. How do you explain the addition of the requirement that the impact be “significant” if it is not intended to reduce protection for resources and values?

Answer. This was an attempt to bring clarity to the definition of impairment. We have not, in any way, diminished the standard. The NPS still considers any action that would harm the integrity of park resources or values to be impairment. An impact that harms the integrity of park resources or values would be significant. We will be carefully considering the comments submitted from both the public and internal sources to see if changes in the proposed definition are necessary.

Question 30. What is the difference between “significant” and “adverse”? Which is harder to demonstrate? (Significant appears to require 2 tests—one to determine if the impact is adverse and one to determine if the impact is significant) Why does an impact have to be significant if it is adverse? Can you give me examples of adverse impacts that would not be significant?

Answer. “Adverse” means unfavorable, undesirable, negative, or harmful. “Significant” means important or of consequence. As used in the context of the Management Policies, adverse impacts are a sometimes inevitable result of visitor activities or park management activities. For example, creating a trail, clearing a scenic overlook, or allowing visitors to consume wild berries would produce adverse impacts on park resources. But we often pursue or allow these types of activities because they help us achieve our broader goals and, relatively speaking, the impacts are not of great consequence. However, given different circumstances the impacts could be much greater. For example, if the trail were created through highly erodible soils, or if the vegetation cleared from the overlook exposed a sensitive archeological site, or if the wild berries were an important food source for a particular bird species, then the impacts might be significant and we would look for ways to avoid or mitigate the impacts, or refrain from undertaking the activity. These nuances are sometimes difficult to discern and to articulate. That is one reason why the draft revisions call for a determination by park managers whether “unacceptable impacts” will result from an action rather than simply the existence of “adverse impacts”.

Question 31. The reference sections throughout the draft seem to refer back to the 2001 Management Policies. Will these be included to add further clarification back to the 2001 Management Policies or will they be updated to refer to the current draft?

Answer. They will be updated to refer to the current draft.

Question 32. Park managers utilize the “Superintendent’s Compendium” as a very effective means to insure that management policies are implemented at each unit throughout the NPS.

a. How does the compendium relate to the Management Policies and fit in to the Law, Policy and Other Guidance section within the preface of the document?

Answer. As authorized by regulation (36 C.F.R. 1.5, 1.7), the Superintendent's Compendium is a written compilation of decisions made under the Superintendent's discretionary authority affecting operations at that park. The decisions contained in the Superintendent's Compendium first and foremost must comply with the applicable statutory and regulatory provisions involved, and secondarily to the Management Policies.

Question 32b. Why is there no reference to it?

Answer. The Superintendent's Compendium is a mechanism to implement legal and policy decisions. Its use is described in regulation, and NPS has not seen a need to discuss it in Management Policies to date.

Question 33. The 2001 Management Policies included a strong statement on how park managers should manage visitor use demands regarding resource protection:

"Congress, recognizing that the enjoyment by future generations of the national parks can be ensured only if the superb quality of park resources and values is left unimpaired, has provided when there is a conflict between conserving resources and values and providing for enjoyment of them, conservation is to be predominant." (2001 NPS Management Policies, at 12.)

This directive has been removed in the revised draft. New language has been added which states:

"The impairment of park resources and values may not be allowed by the [Park] Service unless directly and specifically provided for by legislation or by the proclamation establishing the park . . . The impairment that is prohibited by the Organic Act and the General Authorities Act is a significant impact that, in the professional judgment of the responsible NPS manager, would otherwise harm the integrity of park resources and values, including the opportunities that would otherwise be present for the enjoyment of those resources and values." (2005 Draft NPS Management Policies, at 1-18.)

a. What difficulties have park managers encountered in the course of managing parks under the 2001 language?

Answer. The observation noted above is incorrect in that the "new language" is not new; it is carried forward verbatim (except for the insertion of the word "significant," as explained in the answer to question 29, above) from Section 1.4.4 of the 2001 edition of Management Policies. It is accurate, however, that the previously quoted material (from Section 1.4.3) has been removed in the revised draft. The wording that was substituted says "Because the enjoyment of park resources and values by present and future generations is dependent on their preservation, when there are concerns as to whether an activity will cause an impairment, the Service will protect the resources while taking appropriate steps, including scientific study and public involvement, to resolve the concerns."

Superintendents often face difficult decisions about activities in parks. The draft policies provide greater explanation of what constitutes an "appropriate use" of parks and what impacts are "unacceptable." For the reasons stated in many of the above questions, we strongly believe that the tools contained in the draft policies will enable managers to make more informed and thus better decisions in the future. The draft policies establish a process for park managers to apply the conservation principles underlying the Organic Act in order to make future decisions that are well reasoned and understandable and not considered arbitrary and capricious.

Question 33b. What activities will be allowed under the 2005 language that would not have been allowed under the 2001 language?

Answer. We are not aware of any activities that would be allowed under the new language that would not have been allowed under the 2001 language. However, the intent of some of the edits to the policies is to ensure that NPS decision makers (whether at the park, regional, or headquarters level) give thoughtful consideration to proposed new activities and be prepared to explain why an activity would, or would not, be allowed. This change is a reflection of our goal to improve what some readers have considered a "negative tone," and to more constructively communicate with all those who would find the parks a source of enjoyment. By more constructively communicating with visitors (or potential visitors), NPS managers will better understand the viewpoints of others and have the opportunity to better communicate the NPS mission to them. It is possible that improved communication would result in new activities being allowed through creative management solutions. But

any decision to authorize an activity would be subject to the stringent criteria for “appropriate use” and “unacceptable impacts.”

Question 34. Do you feel the changes in the key section 1.4.3 (the NPS obligation to conserve resources) would in any way compromise our parks?

Answer. No, as stated in several answers above, the changes made to Section 1.4.3 of the draft policies were intended to clarify and to improve the overall tone of the document and to assist decision-making. The NPS remains committed to the protection of park resources and values and when there is a conflict between conserving park resources and values and providing for the enjoyment of them, conservation of the resources will continue to prevail.

Question 35. Section 2 includes a quote. Why is a quote at the beginning of Section 2 and no others? Should the quote be removed to improve consistency?

Answer. Chapter 2 addresses the topic of park planning. Park planning is a vitally important activity because it is the mechanism by which the NPS, following extensive input from the public, articulates a vision for each park's future. Planning is at the crossroads where the Service's responsibility to conserve park resources and values must be reconciled with the ways and means by which this and future generations will be able to enjoy those resources and values. As was stated in the 1988 edition of Management Policies, “There will inevitably be some tension between conservation of resources on the one hand and public enjoyment on the other. The National Park Service is charged with the difficult task of achieving both.” We have found that some who read the 2001 policies may get the mistaken impression that the Service considers public enjoyment a distant and secondary purpose of the parks. We have therefore taken steps to make it clearer that the Service fully embraces the “enjoyment” provision of the Organic Act. One of those steps was to include the quoted material as a reminder to not lose sight of the fact that the fundamental purpose of all parks includes providing for the enjoyment of park resources and values by the people of the United States: Including the quote does not create a consistency problem. If we were to come upon equally appropriate quotes for other chapters, we would be happy to consider them, as well.

Question 36. Section 2 includes a time frame for General Management Plans. Why are there no time frame references for other plans? Please include time frames for all referenced plans.

Answer. Although Congress has directed the preparation of general management plans (GMPs) within a certain timeframe in the establishing legislation for some parks, Congress has not generally prescribed a specific interval for updating GMPs but has left it to the Service to ensure that they are prepared and updated “in a timely manner.” 16 U.S.C. § 1a-7(b). Updates of GMPs are usually needed every 10-15 years to ensure that they are current, but if conditions around the park are changing rapidly, updates may be needed more often. These are broad plans that set overall park direction in terms of management zoning and desired condition statements. Other park plans tier from the park's GMP.

Program management plans, which provide a bridge between GMP's and more specific strategic or implementation plans, are generally reviewed every 5-10 years to ensure currency.

Strategic plans are prepared every three years and their associated annual performance plans are prepared every year. These plans provide 5 year and 1 year performance goals to implement the park's GMP and program plans.

Timeframes for preparing implementation plans vary considerably, depending on the nature of the plans and the circumstances relevant to the particular park units. Generally, these plans are short-term and may be valid for a few years, or until implemented. These are the plans that provide the specific actions to implement the GMP desired conditions and the strategic plan goals.

Question 37. In Sec. 4.4.2.2 the Restoration of Native Plant and Animal Species, you have added a criterion to read, “The impacts on park management including the opportunities for enjoyment of park resources and values have been carefully considered.” With that new proviso, could that have prevented the reintroduction of wolves into Yellowstone National Park?

Answer. No. Given that opportunity for enjoyment of park resources and values depends on park natural resources ideally being in an intact condition of integrity, restoring an extirpated species moves a park closer to integrity and therefore improves the opportunity for enjoyment. Therefore, while not necessary for the decision to restore the wolf to Yellowstone, assessing the impact of restoration on enjoyment, if done objectively, would actually support the decision to reintroduce wolves rather than prevent it. The interest of so many visitors to Yellowstone in viewing wolves demonstrates the importance of this component of ecological integrity to enjoyment of the park.

Question 38. Section 4 of the current policies describe “scenic views” as a “highly valued” feature of the parks, but the redraft deletes the term “highly valued.” Congress established that scenic views in the parks are highly valued by enacting the 1977 Clean Air Act, which establishes the national goal of preventing future, and remedying existing, impairment of visibility in national parks and wilderness areas by manmade pollution. Unfortunately, many parks remain shrouded in haze, and even if current laws are fully enforced, scenic views will not be fully restored until 2064.

a. Given the national goal of eliminating visibility impairment in the parks, and given the decades of concerted effort it will take to achieve that goal, why has the Department devalued scenic views in the policy redraft?

Answer. The Department has not devalued scenic values. The Air Quality section makes it clear that the Service will “seek to perpetuate the best possible air quality in parks to protect: . . . scenic vistas. . . .” Furthermore, we can assure you that we are strongly committed to protecting scenic views and will continue to work with State, federal and Tribal regulators, as well as the public, to achieve the Clean Air Act’s visibility goals.

Question 38b. Shouldn’t the Department instead be strengthening the policies to provide even greater protection of scenic views in the parks?

Answer. We did not intend the draft policies to cause diminution in the ability of visitors to enjoy the parks. Management Policies provide appropriate actions for NPS to take to encourage relevant decision-makers in other organizations to take necessary steps to protect scenic views in parks. The draft policies text properly reflects the NPS’s commitment to protecting scenic views and to continue the NPS’s work with State, federal, and Tribal regulators, as well as stakeholders, to achieve the Clean Air Act’s visibility goals.

Question 39. Section 4 of the current policies includes “clear skies” among the core physical resources of the parks to be protected, but the redraft demotes “clear skies” to an “associated characteristic,” a term that is not defined or used elsewhere in the policies.

a. Why is pollution free air not as essential to the parks as unspoiled water, soils, topographic features, geologic features, and paleontological resources, all of which remain among the core physical resources of the parks?

Answer. Pollution free air is absolutely essential and as important as other park resources and values. The draft policies recognize “air” as a physical resource, and “clear skies” as an associated characteristic, and both are to be preserved in an unimpaired condition. Clean air and clear skies are needed to maintain the ecological integrity of parks, reduce impacts to cultural resources of parks, and ensure effective enjoyment of parks.

Question 39b. Does an “associated characteristic” get less protection than a physical resource?

Answer. No. The draft policy revisions indicate that the “associated characteristics” will be preserved as part of the natural resources, processes, systems, and values of parks. Achieving pollution free air, however, requires cooperation among a large number of entities. The Management Policies mention both air as a resource and clear skies as an associated characteristic. The Clean Air Act refers to “air quality and air quality related values” (such as visibility).

Question 40. In the air resource management section of the current policies (4.7.1), the Park Service is directed to seek the modification or denial of any permit for a facility that would harm park air quality. In the redraft, the Service is directed to first work cooperatively with permitting authorities to seek “technological solutions” that would eliminate harmful impacts on park air quality, and to seek modification or denial of a permit only if cooperation fails to eliminate the impact.

a. What sort of technological solutions are contemplated by this new language?

Answer. Technological solutions include emission control technology, pollution prevention techniques, and operational practices which guarantee protection. The Clean Air Act requires new facilities to install the “best available control technology,” but permit applicants and permitting authorities take a number of factors into account in determining what is “best.”

Question 40b. Does the Park Service have the budget, expertise and authority to make and enforce judgments about complex technological solutions at various facilities necessary to eliminate adverse impacts on park air quality?

Answer. The National Park Service Air Resources Division has the technical expertise to evaluate and suggest viable technological solutions and associated emission rates, in large part because the office reviews permit applications from all over the country and keeps abreast of the state of the art. For years, the NPS Air Resources Division has been able to suggest new pollution control technologies that may not have been chosen by permit applicants for one reason or another. Where

there is an emission control technology or less polluting fuel that could be practical to implement, we suggest it. Another means of reducing pollution near parks is by trading emission credits to reduce the pollution impacting parks. However, we have no enforcement authority except to ask that the permitting authority consider our comments.

Question 40c. Does the directive that the Park Service “work cooperatively” with permitting authorities diminish or weaken its role in defending the parks?

Answer. No, it strengthens it. We have always worked cooperatively with permitting authorities to secure the best possible protection of park air quality and related values (including visibility). We are able to resolve our concerns in this way the vast majority of the time. Occasionally we have issued “adverse impact” findings, which often encourage the permitting authorities to enter into a dialog with us to resolve concerns.

Question 40d. Why only permitting authorities, and why not also the public at large?

Answer. Our communications with permitting authorities, as well as other data and information about air quality in parks are often of a highly technical nature and publicly available through the internet. We share information and correspondence, and work closely with the public, but we must work closely, often in a technical context, with the permitting authorities.

Question 40e. Why is this “associated characteristic” not defined?

Answer. The draft policy revisions indicate that “associated characteristics” will be preserved as part of the natural resources, processes, systems, and values of parks. We will carefully consider whether additional definition will make this an important factor more clearly understood.

Question 41. In section 4 of the policy redraft, the term “natural condition” is redefined to include some human impacts on park resources like air quality. The Clean Air Act and EPA regulations require that air quality in Class I national parks be returned to natural visibility conditions, which according to EPA, means no man-made air pollution impacts on visibility.

a. Would the redefinition of “natural condition” allow the Park Service, EPA or the states to maintain that natural visibility condition in the parks including some level of man-made pollution?

Answer. No. The Clean Air Act establishes the national goal of no man-made visibility impairment in Class I areas. Regulations promulgated by the Environmental Protection Agency (EPA) define “visibility impairment” and “natural conditions” in a way that does not allow man-made pollution. States (and Tribes, if they choose) are required to develop plans that will make reasonable progress toward the national goal. The NPS policies will be interpreted in a manner consistent with EPA’s definition.

Question 41b. Would the redefinition of “natural condition” mean that some level of impairment of air quality by man-made pollution will be tolerated by the Department?

Answer. No. The Department interprets the NPS Management Policies as consistent with statutory and regulatory definitions, and in concert with the process established by EPA to make reasonable progress toward natural conditions.

Question 42. While the draft revision does note in Chapter 1 that the words “protect, preserve and conserve” are used interchangeably, it appears that selective deletions of the word “preserve” did occur. This draft still uses “preserve” in a number of instances. It notes that in Chapter 4, that “Thermal resources in units of the national park system will be protected, preserved, and managed as a critical component of the units’ natural resource systems. . . .” And that “The Service will actively seek to understand and preserve the soil resources of parks, and to prevent, to the extent possible (instead of “practicable”), the unnatural erosion . . .” “Preserve” also remains in the sections related to geological resources, geological hazards, and paleontological resources. “Preserve” and the act of preservation connote a proactive stance towards park resources, whereas “protect” and “restore” have a more defensive and reactive tone. But while the term “preserve” appears in those aforementioned sections in 2001 and in the draft revision, it’s absent now from the section on soundscapes. In 2001, the management policies referring to park soundscapes (4.9) began with the sentence “The National Park Service will preserve, to the greatest extent possible, the natural soundscapes of parks.” Those policies also stated that the Park Service “will protect the degradation of soundscapes due to noise (undesirable human-caused sound).” That initial sentence which set a goal of preservation of natural soundscapes is missing from the new draft, and the phrase regarding ‘protection of degradation of soundscapes’ now modifies noise with the adjective “unacceptable.” The natural soundscapes of parks seem to be one of the resources and values that genuinely make some of these places unique. And pro-

tection of park soundscapes underlies some of the most controversial issues that the Park Service has dealt with in recent years, such as jet ski use and commercial air tour overflights. Why then does this draft revision of the management policies omit the goal of preservation with regard to natural soundscapes?

Answer. The draft policies recognize sound as a natural resource and natural soundscape as an associated characteristic. Natural sound clearly cannot be protected if the soundscape of which it is a part is not protected. While the words “protect,” “preserve,” and “conserve” can have different connotations for different readers, the proposed policies state at the outset that these three words have “interchangeable” (by which we meant “synonymous” or “identical”) meanings for the purposes of the policies. Therefore, with respect to natural sound and the soundscape, the proposed policies call for preventing or minimizing unacceptable impacts to this natural resource. Although the words “undesirable” and “unacceptable” have different levels of intensity, in both cases with respect to soundscapes, the policy direction is to prevent the intrusion of those noises caused by humans that either would disrupt the natural processes mediated by the natural soundscape or reduce the levels of enjoyment experienced by park visitors. The soundscape policy has been modified to better reflect the diversity of the NPS system which in addition to many national parks includes sites such as the New Orleans Jazz National Historical Park, the George Washington Memorial Parkway, and numerous urban sites for which it would be virtually impossible to minimize or eliminate human-caused sounds.

Question 43. These proposed policies claim that they would hold individual park managers to be responsible for implementing these policies yet the requirement that cultural resource personnel should keep current with scholarship and scientific research is deleted. Keeping up with current scholarship and research helps to ensure the integrity of our parks. Please explain this omission.

Answer. We agree entirely with the premise of this question but highlighting the need for training for only selected personnel was construed by some to imply that other career disciplines were less important. For that reason we added a new section 1.7.5.1—Career Development, Training and Management, to cover training and development for all employees.

Question 44. Why has the Park Service decided to eliminate the reference to the Interpretive Competencies and Skills certification program that is an important tool in developing the professional interpretive skills of park and concessionaire naturalists? (7.4) Is this Certification program being phased out?

Answer. There are no plans to phase out the Interpretive Competencies and Skills certification program. However, highlighting the need for training for only selected personnel was construed by some to imply that other career disciplines were less important. For that reason we added a new section 1.7.5.1—Career Development, Training and Management, to cover training and development for all employees.

Question 45. In Sec. 7.4.8, a reference to military battle re-enactments and the related memorial qualities was removed. The NPS maintains world renowned and revered examples of military strategy and the tragic events that led to substantial loss of human life. Will this omission potentially compromise that reputation?

Answer. Absolutely not. The policy remains the same. The only change is to the explanation for why we have the policy.

Question 46. In the draft revision of the management policies, a new sentence has been added to the section concerning airports and landing sites (8.4.8). It says that “Fully functional, efficient, and safe operation of airports is important to providing visitors opportunities to use and enjoy their parks.” That sentence now begins that paragraph which still states at its end that “Whether landing sites or airports are situated within or adjacent to parks, the objective will be to minimize noise and other impacts, and confine them to the smallest and most appropriate portion of the park as possible, consistent with safe aircraft operations.” I understand that there are a few airports in parks, such as Cape Cod National Seashore and Grand Teton National Park. There are air strips in some parks, like in Alaska, and helipads, for search and rescue and fire operations. And, the function, efficiency and safety of airports falls mainly to the FAA and state transportation agencies. If the Park Service’s mission is to conserve resources, such as natural soundscapes, unimpaired, for the enjoyment of future generations, why would you give park managers instructions tying “fully functional and efficient” operation of airports to visitor enjoyment?

Answer. The NPS and the FAA have joint responsibilities for operations for airports on NPS lands. The FAA is responsible for safe air operations in United States airspace. The NPS is responsible for protecting the resources of the park according to the Organic Act and the specific park enabling legislation. The language change in the current draft policies was for clarification and does not alter the ongoing relationship or responsibilities of the two parties. The NPS will continue to use its designated authorities to ensure that the airport and related operations maintain the

smallest possible footprint in the park and that the flight paths and noise levels do not have unacceptable impacts on park resources.

Question 47. Section 8.6.4.4, refers to gas pipelines. This seems out of place given the section is entitled Roads and Highways. Please correct.

Answer. The reference to gas pipelines is the same as the language contained in the 2001 Management Policies, and is intended only to provide information relating to the absence of statutory requirements for right of ways on non-NPS roads and gas pipelines.

Question 48. In Sec. 8.6.8.3, Management Plans for Agricultural Grazing, you have revised the guidance from “will” to “should” in the preparation of livestock management plans. It would seem that livestock management plans are essential in order to protect park resources; the failure to develop a livestock management plan at Dinosaur National Monument resulted in extreme livestock damage to sensitive areas of that park. Can you please explain the reasoning behind lessening this requirement for action?

Answer. Planning is essential for agricultural livestock grazing. In some parks, that planning may be best accomplished by a stand-alone Livestock Management Plan. But in others, the planning may be equally well addressed in another park planning document such as a Resource Stewardship Plan. This planning may also be done in a combination of related plans, such as an Invasive Species Management Plan to address weeds and insect pests associated with agricultural grazing, and Vegetation Management Plans to address stocking rates and pasture rotation schedules.

The mere existence of a plan, unfortunately, does not guarantee protection of the resource. It is unlikely that a livestock management plan at Dinosaur would have altered the incident referenced in the question. By spreading responsibility for livestock grazing management across multiple work disciplines (natural and cultural resource management, facilities, visitor use, and resource protection), the result should be greater, not lessened, success in agricultural livestock grazing management and resource protection.

Question 49. The glossary does not include definitions for three key terms impairment, appropriateness, and unacceptable impact. Given that the document is to provide clarity for park managers all three of these terms should be included. Please explain.

Answer. These important terms are defined in the Introduction so they would be understood prior to reading the document. However, to improve clarity we will also include these definitions in the Glossary.

Question 50. The NPS Pacific West Regional Director prepared a memo in response to the initial policy document

- a. Please provide a copy of the memo.
- b. Indicate how the draft management policies were revised to address each of the concerns pointed out in the memo.
- c. Indicate how the draft management policies were revised to address each of the concerns pointed out in the memo.

Answer. The referenced memo was an internal response to an initial internal draft document and in some instances may not have accurately portrayed the intentions of that internal draft. This was an appropriate part of the internal discussions that led to the draft NPS policies that are now available for public comment. Each of the 13 specific concerns in the memo was addressed during this process. The Pacific West Regional Director was an active participant in that process and in a subsequent communication with park superintendents, he indicated his belief that the current version “is much more consistent with the 2001 Management Policies with the updates about wilderness stewardship, partnerships and sustainability, and greater emphasis on defining ‘appropriate uses’ in parks.” Copies of the memo and subsequent communication are attached.

Because these documents are important to the United States in ongoing matters, we advise you that, although we are making it available for Committee staff review, 1) we do not waive any privileges or exemptions from disclosure that are attached to it [see Attachments 1 & 2]; 2) we are making it available pursuant to the Committee’s request; and 3) we are making it available at this time only to the Committee for use by the Committee for its legitimate legislative functions. We expect that Committee staff will treat information derived from the review as confidential and take all reasonable steps to ensure preservation of the government’s privileges.

Question 51. Management Policies have been in place throughout the history of the NPS dating to 1918, and in their current incarnation since 1975, with three subsequent revisions in 1988, 2001 and the current draft. With this in mind;

- a. What type of disciplinary or corrective action does the NPS take when employees fail to follow the Management Policies?

b. Is it noted in their personnel file?

c. What impact does it have on the employee's career?

Answer. The appropriate corrective action would be taken depending on the circumstances.

Question 52. It is anticipated that some sort of training or briefings will be needed to fully inform National Park Service employees of the new policies.

a. What is the implementation strategy for the new management policies?

Answer. As is the case with all NPS policy, managers and supervisors are responsible for being aware of Management Policies and ensuring that their employees are, as well. Information contained in the Management Policies will continue to be distributed through ongoing training and normal information distribution practices.

Question 52b. What type and how many workshops or other events do you intend to conduct to train Park Service personnel on the interpretation and implementation of the proposed policies?

Answer. Teaching the policies will be and has been an important aspect of our strategy. We would expect to integrate policy awareness into the ongoing, routine activities of the Service (such as regional superintendents' conferences, in-park meetings, and the Servicewide employee development program). Also, the NPS Fundamentals II class schedule is already underway for FY 06, with a dozen or more classes planned. Additional classes, meetings, etc. that have already been planned will include training on Management Policies, as appropriate. This type of training is ongoing within the NPS, and entails no new procedures or requirements. Those who are familiar with the 2001 policies will see that there are few substantive changes, and those who would be most affected by them will have participated in the review and comment process on the current draft policies. Otherwise, the substantive differences can easily be addressed in summary documents, and training can occur at any level that is appropriate in the organization. The best source of training for employees will be for them to read the document. For the most part, the document is self-explanatory.

Question 52c. How will this impact your current budget for training and travel?

Answer. No additional travel expenditures are anticipated for training, as the training (materials, subjects, information) will be modified, as needed, to cover the new policies within previously planned training programs. Relatively minor additional expenditures may be necessary for printing the new document or producing it on CD-Rom when finalized and approved after the comment and review process has been completed, but those costs are not expected to impact other programs.

Question 53. On October 11, 2005, the NPS Director distributed a memo to the National Leadership Council entitled Revised Procedures for GS-13, GS-14, and GS-15 Selections for review and comment.

a. What led to the development of this memo?

b. For the record, please provide a list of "Key Leadership Positions" for which the Director intends to apply the proposed procedures?

c. As described in the memo, will the 4-Cs and the President's management agenda be incorporated into position descriptions for those "Key Leadership Positions"?

Answer. The memo was developed to provide guidance considering the hiring review process for key leadership positions in the NPS. As all of the Regional Directors have been appointed since the last similar guidance was distributed, the timing of such a memo was appropriate. Upon review, we believed that the memo could have been more clearly written. A new memo, prepared in consultation with the National Leadership Council, has been distributed. A copy of the new memo is attached which reflects the types of positions that are covered and the expectations that are necessary for those in leadership positions. [See Attachment 3]

Question 54. Draft Director's Order 21 was released for public comment on October 5, 2005.

a. What type of fund-raising activities does the proposed DO-21 allow Regional Directors and Superintendents to perform that they cannot engage in at this time?

Answer. Currently, Regional Directors and Superintendents do not have the authority to be involved in raising funds with our partners yet many of them attend fundraising functions with partners and provide input relative to projects and related fundraising being proposed. Some of this activity could be viewed as bordering on fundraising. The draft Director's Order #21 makes it clear that "it is the policy of the NPS to work primarily through its partners for fundraising." NPS employees are expected to develop and maintain professional relationships with these partners based on mutual understanding of the goals and functions of both parties.

It is not the intent of the draft Director's Order #21 to imply that senior managers should or would be authorized to regularly solicit donations as part of their job: "NPS will authorize direct solicitations by NPS employees to such third parties only in limited circumstances." The policy is intended to provide authorized officials the

latitude to work in partnership with our friends' organizations when and if the need arises, much as they have been doing without explicit provisions addressing such activities. The authority to actually solicit donations is intended to be granted only sparingly, and then only after review and approval by not only the Regional Director but also the Associate Director for partnership activities and the Office of the Solicitor.

We intend that fundraising agreements between the Service and its non-profit partners will make clear all aspects of the superintendent's role in any fundraising effort. Generally, such agreement language would most likely state that the superintendent is to support the effort of the partner, express the park's desire to see the project funded, and in certain instances may accompany a board member or volunteer campaign committee member on major gift solicitations or to fundraising events. The agreement would also indicate when or establish a process if it is anticipated that a superintendent would co-sign an appeal letter or otherwise promote the non-profit partner's fundraising campaign.

Question 54b. How much has the National Park Service collected from donors during each of the past 5 years?

Answer. The General Accounting (now Accountability) Office, in July 2003, reported that the NPS had 150 Friends Groups (not including the National Park Foundation or our Cooperating Associations) serving 160 parks, donating \$17 million annually. Under the existing version of Director's Order #21, the NPS did not impose a standardized reporting system for tracking contributions to the NPS. The revised Director's Order #21 requires that such a tracking system be established and the Friends Groups are aware that such a system is both desired and needed by the Service.

Donations to the NPS come in many forms and have therefore been difficult to track on a consistent basis. The NPS has just developed an annual, uniform reporting system that will track donations by cooperating associations to the bureau. It is likely that a similar type of system will be instituted with Friends Groups.

Utilizing the existing NPS financial systems, the annual total contributions received in NPS donation accounts over the past five years were as follows:

FY 2001: \$27,536,965
 FY 2002: \$15,239,199
 FY 2003: \$28,966,193
 FY 2004: \$19,409,761
 FY 2005: \$27,605,055

Question 54c. Do you expect to increase the NPS fund raising capability as a result of the new Director's Order?

Answer. The NPS's philanthropic partners have complained since Director's Order #21 was first written that its language was largely negative and not conducive to creating an environment in which they could optimally fundraise on behalf of the National Park Service. The revised Director's Order was written with many of their concerns in mind and in the hope that the provisions of the new Director's Order will enhance their activities. The improved tone of the document, the clarification of roles of both the NPS and our partners and the degree to which expectations between the bureau and our partners are delineated are expected to help our partners to solidify their highly valued role in supporting the mission of the NPS. Although the public comment period is still under way, based on their previous comments to us over the past several years we believe that the revised Director's Order #21 will create a more positive environment for attracting potential donors.

Question 54d. If so, what percentage increase do you anticipate annually?

Answer. We do not at this time have a sense of whether there will be an immediate increase in donations to the NPS or to NPS fundraising partners. We have been told by our fundraising partners that an improved Director's Order #21 has the potential to make their job a great deal easier in fundraising on behalf of the National Park Service.

Question 54e. Within the past fiscal year how much time has the NPS Directorate dedicated to pursuing solicitations?

Answer. Under the Department's previous interpretation of NPS donation authority, solicitation by Departmental officials for NPS was limited to that incidental fundraising on behalf of the National Park Foundation (NPF). By Congressional mandate, the Director serves as Secretary of the NPF Board of Directors and assists the Foundation in their fundraising efforts by providing policy guidance, technical assistance and occasionally contact information. Within the past year, the NPF has entered into its first formal fundraising agreement with the NPS to help raise \$10 million for the Junior Ranger Program. The Director has participated in planning

meetings and social events leading up to requests for funding by the Board of Directors and staff.

To our best knowledge, the Deputy Directors have not participated in solicitation of any type in the last fiscal year.

RESPONSES OF THE NATIONAL PARK SERVICE TO QUESTIONS FROM
SENATOR BINGAMAN

Question 1. Can you please provide me with specific examples (including affected park units) where you think visitor access to national parks or recreational activities have been improperly denied or restricted as a result of the current management policies?

Answer. We have no specific examples of where visitor access has been improperly denied because of the Management Policies. However, it is important that the policies more clearly reflect our intention that requests for use of the parks be given full and thoughtful consideration before a decision is made to deny them. There will be some proposed uses that are inappropriate and should be denied. But the decision to do so should be carefully thought out and explained. One of the purposes of the draft policies is to ensure that new activities, that do not cause impairment, will be considered as appropriate uses.

Question 2. Along with Director Mainella, you sent out a memo to all Park Service employees on September 1, 2005 which began, "in response to a request by Congress, we are currently reviewing the NPS Management Policies." Can you please tell me what is the "Congressional request" you are referring to? Is there legislative language or committee report language directing such a review? Is the "request by Congress" the primary reason the policies are being revised?

Answer. Please see response to question 1 on page 1.

Question 3. Specifically with reference to the issue of resource protection and visitor recreation needs, can you tell me what has changed since the current policies were issued that requires such a significant revision?

Answer. In light of the Congressional requests noted above, and believing that greater clarity could be developed, we believe that it was appropriate to issue the draft policies for comment. On the issue of resource protection and visitor recreation needs, some draft changes in text reflect an effort to recognize the commitment to resource protection and visitor enjoyment contained in the Organic Act. As indicated in earlier questions, we do not believe that the draft policies represent a fundamental change in the substance of the NPS' conservation mission. There are new laws, executive orders, and regulations that impact park management since the policies were last updated in 2001. NPS has increased responsibilities for homeland security, such as protecting national icons against attack. There have also been changes in the demographics of visitors, rapid population growth around parks, improvements in technology that provide new ways to enjoy parks or reduce adverse impacts on resources, and a new focus on civic engagement and cooperative conservation. These changes, combined with expectations from Members of Congress, prompted the review and update of the management policies.

Question 4. Section 8.2.3 of the current policies states that "the Service will strive to preserve or restore the natural quiet and natural sounds associated with the physical and biological resources of parks." The section further provides that "[w]here such use is necessary and appropriate, the least impacting equipment, vehicles, and transportation systems should be used, consistent with public and employee safety." This language has been removed in the proposed revision, which instead states "there are many forms of motorized equipment and mechanized modes of travel, and improved technology has increased their frequency of use." Please explain the problem with the existing motorized equipment language and why the new language is an improvement.

Answer. The language above does not quote the policy at 8.2.3 in its entirety. Section 8.2.3 continues with: "the management of these uses requires effective monitoring of resources and visitor experiences . . . uses and impacts associated with *the use of motorized equipment will be addressed in park planning processes.*" In addition, at 8.1.2 the policies state: "the Service will consider using the best management tool or tools for the *particular situation.*" These statements are intended to provide managers with the flexibility to determine the types of use and levels of use that are appropriate for the individual unit. The NPS believes that each park is unique and may have particular circumstances that need consideration. The draft policies give managers a variety of management tools, including but not limited to; monitoring, adaptive management and the incorporation of best available technologies to determine what uses might be appropriate and at what levels. The draft policies improve the park manager's ability to decide what mitigating requirements

or use restrictions might provide the best protection for an individual park's resources and values.

Question 5. The draft policies remove a provision in the existing policies dealing with potential wilderness (6.2.2.1). Why?

Answer. The discussion of "potential wilderness" was moved to section 6.2.5. We will carefully consider whether the subject of potential wilderness can be addressed more clearly.

Question 6. As I understand it, the Park Service and the Solicitor's Office have long interpreted the Organic Act as not permitting National Park Service employees to solicit donations from corporations and other prospective donors. In fact, the Director issued an order less than a year ago stating "it should be emphasized that neither the NPS nor its employees has authority to solicit donations." I also understand there is a May 1996 Solicitor's Opinion to that same effect. Has the Solicitor's Office withdrawn its earlier opinion and advised you that the proposed policy change is legal?

Answer. The question contains several incorrect statements. First, the general NPS authority to accept donations, found at 16 U.S.C. 6, is not technically a part of the Organic Act. Moreover, the May 21, 1996 document to which the question refers was not a legal opinion, but established "Donation Policy Guidelines" for the Department and was signed by the Solicitor and the Assistant Secretary, Policy, Management and Budget. The Solicitor did guidelines on May 21, 1996 and an opinion for the Departmental Chief of Staff on July 19, 1994, which address the issue of "National Park Service Fund Raising." [See Attachments 4 and 5] In that opinion, the Solicitor recognized the authority under Section 6 to accept donations for the benefit of the System, and went on to simply state that "[t]here is, however, no express generic authority of the Secretary or other Departmental officials to solicit such donations." The opinion further provided:

I find this authority in an amalgam of the Secretary's statutory role as Chair of the Foundation, the statutory authorization for the Department to provide facilities and services to the Foundation on a non-reimbursable basis, and the Secretary's generic authority to accept donations for the National Park System, which can be read to imply some authority to solicit donations, at least in these circumstances [incidental to a National Park Foundation fundraising campaign regardless of whether the donations were received by the Foundation or directly by the Service].

The 1994 opinion only found that the authority to solicit was not expressed on the face of the statute and concluded that at least some authority to solicit donations did exist with respect to the Foundation. In publishing Director's Order 21 in 1998, NPS was following the May 1996 Departmental policy guidance, not making an independent interpretation of its laws as the question states.

The Office of Legal Counsel (OLC) within the Department of Justice issued an opinion in January 2001 in which it concluded that the "express authority to accept gifts, contained in section 403(b)(1) of the Office of Government Ethics (OGE) Authorization Act of 1996, includes the implied authority to solicit gifts". Separate from the Director's Order 21 process, earlier this year the Department reviewed and circulated proposed new donation guidelines to replace those from 1996. In view of the 2001 opinion from OLC, the Office of the Solicitor has concluded that because the NPS statutory authority is essentially the same as that of OGE, and the 1994 reference that the authority to solicit was not expressed on the face of the statute merely created an inference that the authority to accept doesn't imply the authority to solicit, the 1994 opinion has now been superseded.

The NPS incorporated the language from the Department's then draft donation policy guidelines in its proposed revisions to Director's Order #21. This Departmental policy has now been finalized in the Departmental Manual, and a copy of the Departmental policy at 374 DM 6 is also attached. [See Attachment 6]

Question 7. The National Park Foundation was specifically established by Congress to solicit donations on behalf of the National Park Service. The legislative history indicates that one of the reasons for establishing the Foundation was serious concerns about having Park Service employees doing so. Why is it necessary for Park Service employees to solicit donations when that is the legislatively-chartered purpose of the Foundation?

Answer. The National Park Foundation (NPF) is charged with raising funds for the NPS to further the conservation of natural, scenic, historic, scientific, educational, inspirational, or recreational resources for future generations of Americans. In addition to this national fundraising partner of the NPS, there exist some 150 other non-profit fundraising partners of National Parks. These fundraising partners focus on one or a related group of parks and raise funds and in-kind support for

their partner parks. The NPF generally focuses its efforts on system-wide fundraising while the park specific fundraising partners focus on their partner parks.

In many cases (indeed this is the ideal) our park specific fundraising partners and superintendents work very closely together. Superintendents are often encouraged to accompany the partner organization's executive director or volunteer campaign chairman on a fundraising call or other fundraising function in order to reinforce the nature of the partnership to the donor and to focus potential donations to best meet park needs. As the proposed policy clearly states, NPS will authorize direct solicitations by NPS employees to such third parties only in limited circumstances. It is not the intent of the revised Director's Order #21 to imply that NPS employees should regularly solicit donations as part of their job. Rather, it gives them the latitude to work in partnership with our friends organizations when and if the need arises. Moreover, the proposed revision to Director's Order #21 provides that the authority to solicit can only be delegated to a superintendent under very strict guidelines requiring review and approval by not only the Regional Director but also a bureau senior manager and the Office of the Solicitor. In addition, please see our answer to question 54.

Question 8. The draft Director's Order #21 would allow for greater recognition of donors in national parks, including for the first time, permanent recognition such as the naming of rooms in park facilities and other permanent features? Why is this necessary and why is it good public policy?

Answer. While the old Director's Order prohibited permanent naming as a form of donor recognition, it did allow the Director to approve such naming on an exception basis. As many as 90 of our parks have some type of donor recognition within them.

The proposed revision to Director's Order #21 notes that "there is no one size fits all approach when working with partners." Donor recognition is one of the areas where a "one size fits all approach" is inadequate, particularly given that park partners are competing for philanthropic contributions in communities where naming is commonly provided as recognition for gifts to universities and museums. Giving Park Superintendents the opportunity to recognize donors by naming rooms in park facilities as part of an approved donor recognition plan is a way to meet the desires and expectations of donors without compromising the integrity of a park or the National Park System.

Question 9. The proposal would appear to allow recognition of corporate sponsors at special events similar to what occurred a few years ago on the National Mall. In fact, the proposed language appears to allow greater flexibility to recognize donors than the amendment Congress adopted in response to the Mall event. Please explain why you believe the proposed standards are consistent with the amendment adopted by Congress for special events on the Mall. In addition, please explain why you believe the proposed standards are appropriate for special events in other units of the National Park System.

Answer. Our intention was not to allow an inappropriate recognition on the National Mall or other units. The language for this section had been drafted with the referenced amendment in mind. The difference between the language of the amendment and the Director's Order was brought to our attention during our briefing for the staff of the Senate Committee on Energy and Natural Resources Subcommittee on National Parks. During that briefing we indicated we would revise the language to better reflect the amendment, while recognizing, as Congress does, that the more stringent policies under which the National Mall operates are not necessarily appropriate for all units of the National Park System.

Question 10. Last month Director Mainella revised the procedures for hiring Park Superintendents and other managers at the GS-13 grade and above. Under the new procedures, all job candidates must now be vetted with the Washington Office, and candidates must be assessed in their "ability to lead employees in achieving" the NPS Legacy Goals (which I understand is a document developed by the Director), Secretary Norton's "4Cs" slogan, and the President's Management Agenda. It appears the Director is trying to add new politically-oriented criteria to civil service job descriptions. Please explain why this is necessary.

Answer. Please see response to question 53.

Question 11. Are the three criteria referenced in the previous question part of the official job descriptions for the referenced civil service jobs?

Answer. Please see response to question 53.

Question 12. The President's Management Agenda includes a provision on faith-based initiatives. How does the Park Service evaluate its employees "on their ability to lead employees in achieving" this agenda?

Answer. The NPS does not evaluate employees based on any faith-based initiatives, nor is the Department of the Interior a participant in the faith-based management scorecard. Please see the response to question 53.

RESPONSES OF THE NATIONAL PARK SERVICE TO QUESTIONS FROM SENATOR AKAKA

Question 1. On October 12, 2005, in response to my inquiry into the status of the unsigned collective bargaining agreement between the National Treasury Employees Union and the National Park Service (NPS), I was advised by the Park Service that it had identified issues in the collective bargaining agreement that may be inconsistent with applicable law. My understanding is that the Park Service concluded bargaining by tentatively agreeing to the language in each article of the agreement and initialing each article on June 7, 2005. I further understand that on June 23, 2005, the Park Service agreed that negotiations on the collective bargaining agreement were complete and that following ratification by the union, the Park Service would sign the agreement and submit it to the Department of the Interior for agency review. It appears that there was sufficient time to raise concerns during the bargaining process. I would appreciate knowing why these issues of illegality were raised only after this process was concluded?

Answer. The NPS has consistently stated throughout bargaining that many provisions of the proposals put forth by the National Treasury Employees Union (NTEU) were inconsistent with law, rule and regulation. These positions were consistently rejected by NTEU. In addition to these inconsistencies, the proposed contract put forth for signature contains errors in grammar and spelling, references to agencies and parties other than NPS and/or the Department of the Interior, and internal references within the contract to other sections of the contract that do not exist or are in error.

The Service remains open to resolving these issues through negotiations and discussions between the parties. NTEU has elected to abandon bargaining and to litigate these issues through arbitration.

Question 2. As you know, there is an established procedure in the Federal Service Labor Management Relations Statute for dealing with illegal provisions in a negotiated agreement. Under the statute, the Agency head has the opportunity to review a collective bargaining agreement's compliance with law, rule, or regulation (unless the agency has granted an exception to the provision) and reject any illegal provisions. Since the claim of illegality may be asserted through the agency head review process (and the agency neither loses nor waives its rights), why has the NPS not signed the agreement and let the Department of the Interior exercise its right of Agency head review, as Congress intended when it crafted the statute?

Answer. For the reasons stated in the previous answer, the contract put forth for signature has numerous errors beyond inconsistencies with law, rule and regulation. Assuming these other matters were resolved, and NTEU has thus far refused to even discuss them, the position of the NPS is that the parties would be best served by attempting to resolve these inconsistencies with law, rule and regulation outside litigation. While the Statute provides for addressing these matters through agency head review, the Statute clearly states that its purpose and intent is for the "amicable settlement of disputes between employees and their employers involving conditions of employment" and establishes litigation as a last resort. The Federal Labor Relations Authority has established several alternative dispute resolution programs and supports ADR as an alternative to litigation. Additionally, the Statute establishes specific roles for the Federal Mediation and Conciliation Service as a means to resolve bargaining issues. The NPS has consistently sought to resolve issues without litigation.

Question 3. Was there any guidance from the political employees in the Department of the Interior to re-write the management policies? If so, please describe it for me. Did the guidance prescribe a focus, like public access or visitor services?

Answer. Please see the response to question 1 on page 1 of this document.

Question 4. Was there a report, analysis, or evidence that the direction of the parks, and guidance to managers and superintendents, needed to be adjusted? Can you provide that evidence?

Answer. We are not aware of a specific report or written analysis. Please see the response to questions 1 and 3 at the beginning of this document for why adjustments are deemed important and timely.

Question 5. During the hearing I asked several questions about the October 11, 2005, memo from the Director, and how it would be implemented. One of my questions was whether other bureaus in the Department of the Interior have similar policies and memos regarding hiring policies, reaching into the career managerial levels of the civil service to determine their adherence to the President's Manage-

ment Agenda—such as the Fish and Wildlife Service and the Bureau of Reclamation? I also asked about other federal agencies. As I understand it, you responded you would provide this information for the record. Thank you very much for your assistance on this.

Answer. The memo in question was never intended to direct or convey that the National Park Service would select employees based on their adherence to the President's Management Agenda. Neither the NPS or other bureaus have policies regarding hiring practices that address adherence to the President's Management Agenda. It is important to understand that within the Department of the Interior the management goals that are included in the President's Management Agenda are an area of emphasis for performance. All of the performance plans for the Senior Executive Service members reference the priority of the President's Management Agenda along with other management excellence goals, management laws and regulations. These are areas of emphasis for management and for the evaluation of performance, but not for hiring decisions.

The memo was developed to provide guidance considering the hiring review process for key leadership positions in the NPS. As all of the Regional Directors have been appointed since the last similar guidance was distributed, the timing of such a memo was appropriate. Upon review, we believed that the memo could have been more clearly written. A new memo, prepared in consultation with the National Leadership Council, has been distributed. A copy of the new memo is attached which reflects the types of positions that are covered and the expectations that are necessary for those in leadership positions. [See Attachment 3]

RESPONSES OF THE NATIONAL PARK SERVICE TO QUESTIONS FROM SENATOR SALAZAR

Question 1. Colorado's national parks are popular destinations, which people from all over the world visit for their natural and historic wonders and qualities. Recent surveys at Rocky Mountain National Park, Mesa Verde National Park, and the Grand Sand Dunes National Park confirm that visitors are very pleased with their experiences at these units when they visit. As this chart demonstrates, those trends are typical.

If over 90% of visitors are satisfied with their experiences at our nation's parks, why is this revision necessary? Are you trying to fix something that isn't broken?

Answer. Please see response to questions 1 and 11 at the beginning of the document.

Question 2. According to a June 2002 visitor survey at what was then known as the Great Sand Dunes National Monument & Preserve, the most popular activities in the Great Sand Dunes includes climbing the dunes, photography, and wildlife viewing. But as you and other witnesses have acknowledged, language that would be deleted from the 2001 Management Policies contributes toward enhancing and supporting the favored activities in the Dunes.

For example, this sentence is deleted from Section 4.9 (Soundscape Management): "The National Park Service will preserve, to the greatest extent possible, the natural soundscapes of parks."

And this sentence is deleted from Section 8.2 (Visitor Use): "The Service will not allow visitors to conduct activities that unreasonably interfere with . . . the atmosphere of peace and tranquility, or the natural soundscape maintained in wilderness and natural, historic, or commemorative locations within the park."

Why has the Department proposed deleting language that reinforces the importance of scenic vistas, natural sounds, and other qualities that draw people to the Great Sand Dunes and other National Parks?

Answer. The proposed policies do nothing to diminish the importance of scenic vistas, natural sounds, and other qualities that draw people to the Great Sand Dunes and other national parks. The draft policies fully recognize scenic vistas, sounds, and natural soundscapes as either a natural resource or an associated characteristic that draw people to national parks and which we will do our best to protect.

The policy direction is to prevent the intrusion of noises caused by humans that either would disrupt the natural processes mediated by the natural soundscape or reduce the levels of enjoyment experienced by park visitors. The soundscape policy has been modified to better reflect the diversity of the NPS system which in addition to many great natural parks includes sites such as the New Orleans Jazz National Historical Park, the George Washington Memorial Parkway, and numerous urban sites for which it would be virtually impossible to minimize or eliminate human caused sounds. The proposed policies therefore recognize that a park-by-park decision must be made as to when, where, and to what extent we must maintain or restore natural sound. To help accomplish this, a standard has been added to prevent impacts that would unreasonably interfere with the attainment of a park's de-

sired conditions, as identified through the park's planning process. If the planning process identifies an atmosphere of peace and tranquility or a natural soundscape as a desired condition, then the park would be required to meet that standard and manage the area accordingly.

Furthermore, although the language referred to was deleted, similar, or more appropriate, language remains or was inserted elsewhere. For example:

Section 1.4.6: The "park resources" that are subject to the no impairment standard include . . . the park's scenery, scenic features; natural visibility, both in daytime and at night; natural landscapes; natural soundscapes and smells. . . .

Section 4.7.1: [T]he Service will seek to perpetuate the best possible air quality in parks to protect (1) natural resources and systems; (2) cultural resources; and (3) public enjoyment, human health, and scenic vistas.

Section 4.9: Using appropriate management planning, superintendents will identify what level of noise is consistent with the park's enabling legislation or proclamation and the management objectives of the park.

Section 4.9: The Service, through cooperation, consultation, and communication, will take action to prevent or minimize all noise that, through frequency, magnitude, or duration, unacceptably impacts the natural soundscape or other park resources or values.

Section 8.1.2: An "unacceptable impact" is an impact that would . . . degrade resource conditions so as to preclude future generations from enjoying the resource in as good, or better, condition.

Section 8.2: [T]he experience the Service provides for visitors' enjoyment is one of "authenticity." Examples of this authenticity include . . . scenic vistas presented via access that is light on the land and secondary to the natural landscapes.

Question 3. Because this specific resource-based language is deleted from several sections of the management policies, a park superintendent would find it necessary to refer to the fundamental purpose of the national park service established in the 1916 Organic Act, namely to protect and conserve park resources and values over all uses. But many of Mr. Hoffman's proposed revisions of those basic principles have survived in this draft. For example, the extensive deletions and changes to section 1.4.3 would undermine the Park Service's primary purpose, namely to protect and conserve park resources.

Why are those changes necessary?

Answer. We do not feel that the changes to section 1.4.3 would undermine the NPS's primary purpose. These changes are intended to ensure that NPS decision makers (whether at the park, regional, or headquarters level) give thoughtful consideration to proposed new activities and be prepared to explain why an activity would, or would not, be allowed. This change is a reflection of our goal to improve on what some readers have considered a "negative tone," and also of our goal to more constructively communicate with all those who would find the parks a source of enjoyment.

The draft policies continue to apply the conservation mandate that has long been at the heart of the NPS's interpretation of the Organic Act. When a conflict arises between conserving park resources and values and providing for their enjoyment, the process for determining what are appropriate uses and the mandate that unacceptable impacts not be allowed ensures that protection of park resources is maintained. The draft policies contain detailed definitions and processes which enable park managers to more readily determine how resources can best be conserved while providing a positive visitor experience. There is no change in the fundamental policies underlying the Organic Act, but an improved way to ensure that its objectives are, in fact, achieved. Thus, conservation is predominant.

Question 4. After the 2001 Management Policies were adopted, Director Fran Mainella testified before the House Subcommittee on National Parks, Recreation and Public Lands that "there can be no outdoor recreation without protection of the resource first, and if you are going to err, you will err on the side of the resource."

a. Does the Park Service still hold to that view? If so, can you show me where in the proposed management policies that view is reflected?

Answer. Yes. As a key tenet of the Organic Act of 1916 that is reaffirmed by the General Authorities Act of 1970, as amended, the draft management policies repeatedly embrace the fundamental concept that when there is a conflict between enjoyment and conservation, conservation of the resources will prevail. The following statements are a few of the many examples from the draft policies that reinforce that important and guiding principle:

Introduction: "When proposed park uses and the protection of park resources come into conflict, park managers are obligated to ensure that the resources and values for which the park was created are not diminished."

Introduction: Conserve, Preserve and Protect: “The choice of any one of these words, within these policies, is not intended to, and should not be construed to imply a greater or lesser restriction on opportunities for visitor enjoyment or level of care for park resources and values.”

Section 1.4.3: “when there are concerns as to whether an activity or action will cause impairment, the Service will protect the resources . . .”

Section 1.4.3: “. . . Congress established the overarching mission for national parks, which is to protect park resources and values to ensure that these resources are maintained in as good, or better, condition for the enjoyment of future generations.”

Section 4.1: “In cases of uncertainty as to the impacts of activities on park natural resources, the Service will protect the natural resources . . . and strive to reduce uncertainty by facilitating and building a science-based understanding.”

Section 1.10: Letter from Secretary of the Interior, Franklin K. Lane to the first Director of the National Park Service, Stephen T. Mather, “. . . that the national parks must be maintained in absolutely unimpaired form for the use of future generations as well as those of our own time. . .”

Section 1.4.1: 1978 amendment to the 1970 General Authorities Act, “Congress further reaffirms, declares, and directs that the promotion and regulation of the various areas of the National Park System, as defined in section 1c of this title, shall be consistent with and founded in the purpose of section 1 of this title (the Organic Act) to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, as may have been or shall be directly and specifically provided by Congress.”

Question 5. In your proposed new definition of impairment, you require that an impact be “significant” to constitute impairment. Previously, impairment was considered to be any impact which, in the professional judgment of the responsible National Park Service manager, would harm the integrity of park resources or values.

a. How do you explain the addition of the requirement that the impact be “significant” if it is not intended to reduce protection for resources and values?

b. What is the difference between “significant” and “adverse?” The revised management policies appear to require both an adverse impact and one that is significant. Is that correct? Why does an impact have to be significant if it is adverse? Can you give me examples of adverse impacts that would not be significant?

Answer. Please see the response to question 29 for question 5a.

“Adverse” means unfavorable, undesirable, negative, or harmful. “Significant” means important or of consequence. As used in the context of the Management Policies, adverse impacts are a sometimes inevitable result of visitor activities or park management activities. For example, creating a trail, clearing a scenic overlook, or allowing visitors to consume wild berries would produce adverse impacts on park resources. But we often pursue or allow these types of activities because they help us achieve our broader goals and, relatively speaking, the impacts are not of great consequence. However, given different circumstances the impacts could be much greater. For example, if the trail were created through highly erodible soils, or if the vegetation cleared from the overlook exposed a sensitive archeological site, or if the wild berries were an important food source for a particular bird species, then the impacts might be significant and we would look for ways to avoid or mitigate the impacts, or refrain from undertaking the activity. These nuances are sometimes difficult to discern and to articulate. That is one reason why the draft revisions call for a determination by park managers whether “unacceptable impacts” will result from an action rather than simply the existence of “adverse impacts”.

Question 6. I’ve been told that the policies are being updated to improve their clarity, yet important sections that guide management of off-road vehicle use seem to have been muddled. For example, the 2001 Management Policies (in Section 8.2.3.1) explicitly reference President Nixon’s executive order on off-road vehicle management, which makes clear that public land managers must consider resource protection, public safety and user conflicts when deciding whether to allow off-road vehicle use. And the language of that section reinforces these principles. Instead of resting on public safety, minimizing user conflicts, and resource protection, the new policy with respect to off-road vehicle use appears to prod managers to allow off-road vehicle use.

Why do the revised management policies delete the language that reinforces the Nixon executive order and add a new definition of “appropriate use,” which is both confusing and overly permissive?

Answer. The draft policies do not change or alter the direction given in the Executive Order. The Executive Order and our existing regulations continue to govern off-road vehicles. The definition of appropriate use establishes a process by which park managers can make a determination about whether any particular use would be appropriate in a park. In determining whether off-road vehicle use might be appropriate managers are directed to engage the public and use the best scientific information. This concept is further clarified by setting forth a list of criteria that park managers must apply, using their professional judgment, to determine what uses are appropriate in a particular park. Such criteria include, among others, ensuring that uses do not cause unacceptable impacts, create an unsafe or unhealthful environment for visitors or employees, or result in significant conflict with other appropriate uses.

The intent of the revisions is to provide managers with the flexibility to determine the types of use and levels of use that are appropriate for the individual unit. The NPS believes that each park is unique and that a one size fits all policy is not an effective management tool. The NPS also believes that Management Policies do more than simply restate law or regulation: they offer guidance to help park managers solve real world issues on the ground. The draft policies direct managers to utilize the best available science and a variety of management tools, including but not limited to; park planning, monitoring, adaptive management and the incorporation of best available technologies, to determine what uses and what levels of use might be appropriate. The draft policies are intended to give the park manager the ability to decide what mitigating requirements or use restrictions might provide the best protection for an individual park's resources and values, while providing for appropriate visitor activities.

Question 7. For instance, the off-road vehicle language no longer mentions visitor safety or resource protection. And when considering whether off-road vehicle use would be an “appropriate use,” the revised draft states, “The Service may allow other visitor uses that do not meet all the above criteria (including uses that have occurred historically and uses that represent new technology).” The criteria in sections 8.1.1 and 8.2 largely cancel each other out, and a park manager is left with historic use and new technology as the primary standards.

The Park Service has to ensure visitor safety and resource protection—why is that language deleted? Why is it replaced with a new definition that appears to prod park managers into considering new standards? How would a park manager choose between the fundamental principles derived from the Organic Act and almost one hundred years of management principles based on that Act, on the one hand, and the new management policies on the other?

Answer. Please also refer to the response to question 6 above. The NPS disagrees with the premise that the criteria in section 8.1.1 and 8.2 largely cancel each other out. In the example given, the other visitor uses (including historic uses) would be subject to the criteria in 8.1. The NPS also disagrees with the premise that implementation of the Organic Act and the implementation of the draft management policies are mutually exclusive. The draft policies must be and are fully consistent with the Organic Act. The Management Policies do not carry the force of law; and the Executive Orders that limit off-road vehicle use on federal lands cannot be, and are in no way, diminished by the draft policies. With specific regard to visitor safety and resource protection, off-road vehicle use would be subject to the new (and more comprehensive) standards for “appropriate use” and “unacceptable impacts” rather than the less comprehensive standards in section 8.2.3.1 of the 2001 edition. Under the new standards, if an activity created an unsafe or unhealthful environment for visitors or employees, it would not be allowed. Also, if it was inconsistent with park purposes or values, diminished opportunities for current or future generations to enjoy park resources, or degraded park resources, it would not be allowed.

Question 8. The attached National Park Service 10 year analysis of air quality monitoring data from 1994-2003 depicts worsening air quality for a number of airborne contaminants at national parks in Colorado where monitoring data is available. Ozone is worsening at Rocky Mountain and Mesa Verde national parks. The haziest days are getting hazier at Mesa Verde, Rocky Mountain and Great Sand Dunes national parks. Great Sand Dunes has the unfortunate distinction of being the only national park in the country where scenic vistas are becoming more polluted both on the clean and dirty days. Nitrate concentrations in precipitation are worsening at Rocky Mountain NP and ammonium concentrations in precipitation are worsening at both Rocky Mountain and Mesa Verde NPs. Nitrogen pollution has a common role in creating or exacerbating many of these problems.

Why is the Department seeking to weaken its internal policies that guide its decision making in protecting air quality in our national parks at the time that its own data shows air quality at national parks across Colorado are worsening? Shouldn't we be strengthening and re-doubling our resolve to protect the crown jewels of Colorado? These crown jewels not only inspire millions of American families but they are also the foundation of Colorado's tourist economy.

Answer. The draft policies are intended to maintain visitor enjoyment of the parks by ensuring park resources are protected and park values are sustained. The Department is not seeking to weaken its internal policies. Please see the answers to questions 31 through 34 earlier in this document. Management Policies provide appropriate actions for NPS to take to encourage relevant decision-makers in other organizations to take necessary steps to protect scenic views in parks. Specifically, in Colorado the NPS is working closely with the State of Colorado to address the issues you have identified in order to improve the air quality at the NPS units in Colorado. For additional information regarding air quality please see the responses to questions 38 through 41 earlier in this document.

Question 9. The revised management policies would relegate scenic vistas and clear skies at national parks to an "associated characteristic." See Ch. 4, p. 3, line 23. But national park visitors consistently list scenic vistas and clean air as one of the central features that they highly value. Moreover, since 1977, the Clean Air Act has included a special program to protect the scenic vistas in the country's premier national parks. See Clean Air Act § 169A. Congress pointedly adopted the visibility program to protect the "intrinsic beauty and historical and archeological treasures" of certain federal lands, observing that "areas such as the Grand Canyon and Yellowstone Park are areas of breathtaking panorama; millions of tourists each year are attracted to enjoy the scenic vistas." H.R. Rep. No. 294, 95th Cong., 1st Sess., at 203-04 (1977). Further, section 165 of the Clean Air Act defines "visibility" as one of the core "air quality related values" of national parks that deserve heightened protection under the laws program to prevent significant deterioration of air quality.

Why are you relegating the protection of scenic vistas to an "associated characteristic" when the Clean Air Act identifies protection of scenic vistas as a core value and Congress has carefully crafted a program to protect the vistas at our premier national parks? Will you remedy this in the final manual and clearly identify scenic vistas and clean air as a core, integral value to be fully protected?

Answer. Scenic vistas receive the same high standard of protection as all other natural resources and values. The draft policy revisions indicate that the "associated characteristics" will be preserved as part of the natural resources, processes, systems, and values of parks. Achieving pollution free air, however, requires cooperation among a large number of entities. Clearly, the Management Policies need to mention both clear air as a resource and clear skies as an associated characteristic. See answer to Question 39.

Question 10. The revised manual would substantially alter the definition of "natural condition" "to describe the condition of resources that would occur in the absence of human dominance over the landscape but not necessarily the absence of humans." See Ch. 4, p. 3, lines 26-28. This change conflicts with the national visibility goal declared and codified by Congress in 1977: "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution." Clean Air Act § 169A(a)(1). The goal to restore scenic vistas to their natural conditions, to remedy manmade air pollution, was carried out as a central feature of EPA's 1999 final rules to cut regional haze in national parks and these provisions were affirmed by the DC Circuit in the face of vigorous industry challenge.

What does it mean to have a definition of natural conditions that is offended only by human dominance over the landscape? This is contrary to the Federal Land Managers' affirmative responsibility under the Clean Air Act and the national visibility protection goal enunciated by Congress over a quarter century ago. The Clean Air Act and its implementing rules are manifest that addressing manmade impairment is a genuine goal, and that we must make incremental stepwise process toward that end. A standard that supplants natural conditions with conditions tolerating dominance over the landscape is doomed to failure and contrary to law.

Answer. Please see the answer to question 41.

Question 11. Over the past 30 years, NPS has repeatedly acknowledged and admitted its failure to comply with statutory and regulatory mandates to review and recommend wilderness. In 1993 a NPS Task Force concluded that "past agency leadership has not met its responsibilities for wilderness management" and that "many NPS wilderness studies and recommendations have languished for as long as 20 years." In August 2000, the Acting Associate Director noted that a review of NPS Wilderness Program files "revealed the extent of the workload remaining for [NPS]

with respect to Wilderness Studies and Designation” and admitted that “[i]t is apparent that in many instances this is not even recognized as a workload.” In response to these admitted failures, the 2001 Policies ambiguously stated that all lands would be reviewed and such reviews would be done in a timely manner. The proposed revisions eliminate the clear mandate to study all lands and to do so in a timely manner.

What assurances can you give that the proposed revisions will keep NPS from again slipping into a pattern of disregard of statutory and regulatory deadlines?

Answer. Eighty-four percent of the acreage of the National Park System is currently either Congressionally designated wilderness, or in the process of being considered for designation. The vast bulk of NPS lands have already been reviewed. There are a few remaining parks that were in existence on September 3, 1964, for which there is a clear mandate to conduct a wilderness review, that have failed to do so. The Director’s Wilderness Action Plan calls for those parks to complete the wilderness eligibility determination, and we are committed to completing that task.

Question 12. The Wilderness Act states that certain uses, such as commercial enterprises and permanent roads, are prohibited in designated wilderness “except as necessary to meet minimum requirements for the administration of the area for the purposes of [wilderness].” 16 USC § 1133(c) (emphasis added). This is known as the “minimum requirement analysis” and is a documented process used to determine if proposed administrative activities affecting wilderness are in fact necessary and, if so, how any impacts might be minimized. The existing Management Policies set forth a two-step process that tracks directly the Wilderness Act’s mandate. See 6.3.5. In contrast, the proposed revision eliminates the key phrase “for the purposes of wilderness.” As a result the two-step process asks managers to consider only if the proposed action “is appropriate or necessary for administration of the area.”

Was it your intent to alter the Wilderness Act’s mandate? If not, why change the existing two-step process, which clearly articulates the distinction between wilderness and non-wilderness lands?

Answer. The draft Management Policies would not and could not change the Wilderness Act mandate. We intend only to clarify how we implement the Wilderness Act’s mandate. Section 4(c) does not state “for the purposes of wilderness.” Rather, it states “for the purpose of this Act”. In Section 4(a), the purposes of this Act were declared to be within and supplemental to the purposes for which the areas were originally created. Some of the activities managers are required to do in wilderness have nothing to do with the Wilderness Act per se (such as administering valid existing rights to subsurface minerals, or restoring historic structures), but these activities, too, need to be evaluated through the minimum requirement process. Also, of the Section 4(c) prohibitions, permanent roads and commercial enterprises are the two that are not subject to the minimum requirement provision. They are prohibited unless specifically provided for in the Act.

RESPONSES OF THE NATIONAL PARK SERVICE TO QUESTIONS FROM SENATOR FEINSTEIN

Question 1. The National Park Service (NPS), in contrast to other federal land management units, has always strived to preserve the natural environment in the parks. Given this mission, why do the draft management policies remove the stipulation that when motorized equipment is used in the parks, only the “least impacting equipment, vehicles and transportation systems should be used”?

Answer. The NPS believes that each park is unique and that a one size fits all policy is not always an effective management tool. The draft policies direct managers to utilize sound science and a variety of management tools, including but not limited to, planning, monitoring, adaptive management and the incorporation of best available technologies to determine what uses, as well as what levels of use, might be appropriate for a park unit. The draft policies would give park managers the ability to decide what mitigating requirements or use restrictions might provide the best protection for an individual park’s resources and values.

With that in mind, the language quoted in the question above does not quote the proposed policy at 8.2.3 in its entirety. The proposed section 8.2.3 continues with: “The management of these uses requires effective monitoring of resources and visitor experiences. Uses and impacts associated with *the use of motorized equipment will be addressed in park planning processes.*” In addition, the following policy statements provide managers with flexibility to apply any necessary limitations or conditions appropriate to protect the resources and values of a particular park unit:

Introduction: “[T]he responsible manager will use good judgment to ensure that uses will not . . . cause an “unacceptable impact.”

Section 8.1.2: “The Service will consider using the best management tool or tools for the *particular situation*. . . .”

Section 8.1.2: “When a use is authorized by law, . . . and when it is reasonably anticipated to cause unacceptable impacts to park resources or values, the Service will minimize or mitigate the impacts to the point where there will be no unacceptable impacts; or, if necessary, the Service will not allow a proposed activity or eliminate an existing activity.”

Section 8.2: “If a superintendent has a reasonable basis for believing that an ongoing or proposed public use would cause unacceptable impacts to park resources or values, the superintendent must manage the activity so as to prevent or eliminate the unacceptable impacts, or reduce them to acceptable levels. As appropriate, the superintendent may . . . require the use of best available technology and improved techniques. . . .”

Section 8.2.1: “In general, carrying capacity should not be defined in static numeric terms, but rather should (1) describe desired resource and social conditions, and (2) identify the kinds of policies, actions, and *best available technology* that could be implemented to achieve the desired conditions.”

Question 2. The new draft policies would remove language in older policies designed to protect air quality and soundscapes in national parks. What is the removal of this language attempting to accomplish?

Answer. The draft revisions on air quality and soundscapes are not intended to reduce protection of these park resources and values. Please see the answers to questions 15 and 38 through 42 earlier in this document.

Question 3. What is the risk that these new management policies, in combination with the new rules about fundraising, could lead to pressure on park administrators to push the boundaries of what constitutes “acceptable impacts”? For example, there exists the possibility that a desire by park managers to raise money from private sources, plus potential corporate donors who ask for access in return for donations, could lead to activities in the parks that run contrary the long-term conservation goals of NPS. What do the new rules do to prevent this type of scenario?

Answer. We do not believe this will happen. The revised draft Director’s Order on Donations and Fundraising incorporates requirements from the Department-wide donation policies that all donations accepted should maintain the integrity, the impartiality, and public confidence of the Service and the Department. This guidance, in combination with the other legislative and policy mandates, ensures that decisions by NPS employees must be directed to promote the long-term conservation goals of NPS. NPS employees are encouraged to contact their Regional Partnership Coordinators or the National Partnership Office in the event that they have any concern about the application of these policies. NPS would return a donation if, in subsequent conversations with a donor, it becomes evident that there is an expectation of special treatment or considerations.